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

WHEN: Tuesday, September 11, 2007
9:00 a.m.–Noon

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Contents

Federal Register

Vol. 72, No. 170

Tuesday, September 4, 2007

Agriculture Department
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50682–50683

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50683–50684

Coast Guard
NOTICES
Meetings:
Towing Safety Advisory Committee, 50687

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

Commission of Fine Arts
NOTICES
Meetings, 50666

Commodity Futures Trading Commission
RULES
Foreign futures and options transactions:
Exemptions—
Singapore Derivatives Trading Ltd., 50645–50647

Defense Department
See Defense Intelligence Agency
See Defense Logistics Agency
See Engineers Corps
NOTICES
Privacy Act; systems of records, 50666–50672

Defense Intelligence Agency
NOTICES
Privacy Act; systems of records, 50672

Defense Logistics Agency
NOTICES
Privacy Act; systems of records, 50672–50674

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50674–50676

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Carryover Storage and San Vicente Dam Raise Project, San Diego, CA, 50674

Environmental Protection Agency
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Petroleum refineries; wastewater treatment systems and storage vessels; requirements, 50716–50742
Air quality implementation plans; approval and promulgation; various States:
New Jersey, 50650–50652
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50679–50680
Privacy Act; systems of records, 50680–50681

Federal Aviation Administration
RULES
Airworthiness standards:
Aircraft engine standards for engine life-limited parts, 50856–50861
Turbine aircraft engines; safety analysis, 50864–50868
PROPOSED RULES
Airworthiness directives:
Honeywell, 50648–50650

Federal Emergency Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50688–50690
Disaster and emergency areas:
Minnesota, 50690
Vermont, 50690–50691

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Texas Eastern Transmission, LP, 50676

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Washoe County, NV, 50712

Federal Railroad Administration
PROPOSED RULES
Railroad locomotive safety standards:
Electronically controlled pneumatic brake systems, 50820–50853

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 50681

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
NOTICES
Endangered and threatened species and marine mammal permit applications, determinations, etc., 50692–50693
Endangered and threatened species permit applications, determinations, etc., 50693–50694
Marine mammal permit applications, determinations, etc., 50694–50695

Forest Service
NOTICES
Meetings:
Deschutes Provincial Advisory Committee, 50653
Oregon Coast Provincial Advisory Committee, 50653
Resource Advisory Committees—
Madison-Beaverhead, 50653
Siuslaw, 50653

Government Accountability Office
RULES
Public availability of records; congressional correspondence disclosure and interview records withholding; exemptions, 50643–50644

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Various States, 50654–50657

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Interdisciplinary, Community-Based Linkages Advisory Committee, 50685

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Meetings:
Data Privacy and Integrity Advisory Committee, 50686–50687

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Alaska Native/Native Hawaiian Institutions Assisting Communities Program, 50691
Tribal Colleges and Universities Program, 50691–50692

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50712–50713
Meetings:
Art Advisory Panel, 50713
Senior Executive Service Performance Review Boards; membership, 50713–50714

International Trade Administration
NOTICES
Antidumping:
Honey from—
Argentina, 50661–50662
Stainless steel bar from—
Germany, 50662–50663
Stainless steel sheet and strip in coils from—
Mexico, 50663
Antidumping and countervailing duties:
Administrative review requests, 50657–50659
Five-year (sunset) reviews—
Advance notification, 50659
Initiation of reviews, 50659–50661
Grants and cooperative agreements; availability, etc.:
China and India; U.S. Electronic Education Fairs, 50663–50664

International Trade Commission
NOTICES
Import investigations:
Carbon and alloy steel wire rod from—
Various countries, 50696–50699
Off-the-road tires from—
China, 50699

Labor Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50699–50700

Land Management Bureau
NOTICES
Meetings:
Grand Staircase-Escalante National Monument Advisory Committee, 50695–50696
Resource management plans, etc.:
Coeur d' Alene Field Office, ID, 50696

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 50700

Millennium Challenge Corporation
NOTICES
Meetings; Sunshine Act, 50700–50701

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50701

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 50701–50703

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50703

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 50788–50818
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 50664

Mid-Atlantic Fishery Management Council, 50664–50665
New England Fishery Management Council, 50665
North Pacific Fishery Management Council, 50666

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50703–50704
Reports and guidance documents; availability, etc.:
Energy Department waste determinations; related activities, 50704–50705

Postal Regulatory Commission
PROPOSED RULES
Practice and procedure:
Market dominant and competitive postal products; rate regulation, 50744–50786

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
NYSE Arca, Inc., 50705–50706

Small Business Administration
NOTICES
Disaster loan areas:
Minnesota, 50707–50708
North Carolina, 50708
Oklahoma, 50708
South Carolina, 50708–50709
South Dakota, 50709
Wisconsin, 50709–50710
Applications, hearings, determinations, etc.:
Zero Stage Capital V, LP, 50707

Social Security Administration
NOTICES
Meetings:
Ticket to Work and Work Incentives Advisory Panel, 50710

State Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50710–50711
Presidential permit applications:
Webb County, TX and Colombia, Mexico; international rail bridge construction, 50711
Reports and guidance documents; availability, etc.:
International Joint Commission; Lake Ontario-St. Lawrence River; water levels and flows regulation; approval order decision, 50711

Substance Abuse and Mental Health Services Administration

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 50685–50686

Thrift Supervision Office
RULES
Savings and loan holding companies; prohibited service
Temporary exemption; expiration date extended, 50644–50645

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

Western Area Power Administration
NOTICES
Power rates:
Boulder Canyon Project, 50676–50679

Separate Parts In This Issue

Part II
Environmental Protection Agency, 50716–50742

Part III
Postal Regulatory Commission, 50744–50786

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 50788–50818

Part V
Transportation Department, Federal Railroad Administration, 50820–50853

Part VI
Transportation Department, Federal Aviation Administration, 50856–50861

Part VII
Transportation Department, Federal Aviation Administration, 50864–50868

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

4 CFR
81 50643

12 CFR
585 50644

14 CFR
33 (2 documents) 50856, 50864

Proposed Rules:
39 50648

17 CFR
30 50645

39 CFR

Proposed Rules:
3001 50744
3010 50744
3015 50744
3020 50744

40 CFR

Proposed Rules:
52 50650
63 50716

49 CFR

Proposed Rules:
229 50820
232 50820
238 50820

50 CFR
679 50788

Rules and Regulations

Federal Register
Vol. 72, No. 170
Tuesday, September 4, 2007

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.

GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 81

Public Availability of Government Accountability Office Records

AGENCY: Government Accountability Office.

ACTION: Final rule.

SUMMARY: GAO amends its records rule to clarify and broaden the existing exemption regarding the disclosure of congressional correspondence and to add a new provision regarding the handling of requests for records of interviews created by GAO in connection with its work. Specifically, the revision to the congressional correspondence exemption enables GAO to release or withhold congressional correspondence without prior congressional authorization. The new provision ensures that an agency from which an interview was obtained is notified of a request for the record of interview and receives an opportunity to advise GAO whether the record of interview or portions thereof should be exempt from disclosure. The new provision will enhance the open, frank, and honest exchange of information from other agencies, nonfederal organizations, and individuals to GAO during the course of a GAO audit, evaluation, or investigation.

EFFECTIVE DATE: October 4, 2007.

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Deputy Assistant General Counsel; telephone 202–512–2846; e-mail *bielecj@gao.gov.*

SUPPLEMENTARY INFORMATION: On September 18, 2006, GAO published a proposed rule in the **Federal Register** proposing two revisions to 4 CFR Part 81.6 and requesting comments (71 FR 54597). Even though, as a legislative branch agency, GAO is not subject to the Administrative Procedures Act and was not required by law to seek comments before issuing a final rule, GAO requested comments concerning its proposed revisions for a 45-day comment period ending November 2, 2006.

Two comments were received during the comment period. The first commenter objected to any change that would lessen the transparency of governmental actions. The second commenter opposed the creation of the additional exemption regarding records of interviews on the grounds that the new exemption is overly broad and could appear arbitrary and capricious. After careful review and consideration of the comments, GAO decided that no changes were needed to the proposed revision regarding congressional correspondence. With respect to the new provision in § 81.6 concerning records of interviews, GAO took into account the comment regarding the regulation appearing overly broad and added language to clarify the procedures to be followed when a request for records of interviews is made. Moreover, for the sake of clarity and transparency, GAO determined that this new provision should be placed in 4 CFR 81.5 rather than in § 81.6 since § 81.5 specifically relates to records obtained or created in the course of GAO's audit, evaluation, or investigative work.

As previously stated in the proposed rule, the revision to § 81.6(a) simply clarifies that GAO is not required to obtain congressional authorization prior to the release or withholding of congressional correspondence from its records. This revision ensures consistency in the handling of records that contain information regarding the communications between GAO and congressional members. It will not result in additional restrictions on the availability of such records.

The amendment to § 81.5 ensures that an agency from which an interview was obtained is given notice of the request for the record of interview and given an opportunity to advise GAO whether the record of interview or portions thereof should be exempt from disclosure. While a record of interview is a GAO-created record, the information contained therein comes directly from another agency. The agency from which an interview was obtained is in the best position to know whether particular information contained in a record of interview may be sensitive or privileged, and therefore, whether it should be protected from public disclosure.

Although the amendment to § 81.5 provides an opportunity for input from another agency, the sole discretion regarding the release of records of interviews or portions thereof remains with GAO's Chief Quality Officer. In deciding whether to release a record of interview, the new provision makes clear that the Chief Quality Officer will consider the views of the agency from which the interview was obtained and the exemptions contained in § 81.6 or any other law or regulation.

While the amendment may restrict the availability of certain records of interviews, as discussed in the proposed rule, the success of GAO's work requires that employees of other agencies and organizations participate in interviews and provide open, frank, and honest opinions during these interviews. Without the amendment to § 81.5, GAO's ability to conduct necessary interviews could be diminished, which could negatively influence the quality of work GAO performs for Congress on behalf of the American people.

List of Subjects in 4 CFR Part 81

Administrative practice and procedure, Archives and records, Freedom of information.

■ For the reasons stated in the preamble, amend part 81 of title 4 of the Code of Federal Regulations as follows:

PART 81—PUBLIC AVAILABILITY OF GOVERNMENT ACCOUNTABILITY OFFICE RECORDS

■ 1. The authority citation for part 81 continues to read:

Authority: 31 U.S.C. 711.

■ 2. In § 81.5, revise the section heading, redesignate paragraph (b) as paragraph (c), and add new paragraph (b) to read as follows:

§ 81.5 Records originating outside GAO, records of interviews, or records involving work in progress.

* * * * *

(b) It is the policy of GAO that prior to the release of a record of interview created by GAO in connection with an audit, evaluation, or investigation of a program, activity, or funding of a

government entity, GAO will notify the agency from which an interview was obtained of the request. GAO will provide that agency with a reasonable opportunity to indicate whether the record of interview or portions thereof should be exempt from disclosure and the reason(s) for the exemption. The public disclosure of a record of interview remains within the discretion of GAO's Chief Quality Officer, but GAO will consider the views of the agency and the exemptions provided for under § 81.6 or any other law or regulation in deciding whether to release all or portions of a record of interview.

* * * * *

■ 3. In § 81.6, revise paragraph (a) to read as follows:

§ 81.6 Records which may be exempt from disclosure.

* * * * *

(a) Records relating to work performed in response to a congressional request (unless authorized by the congressional requester), congressional correspondence, and congressional contact memoranda.

* * * * *

Dated: August 27, 2007.

Gary L. Kepplinger,

General Counsel, Government Accountability Office.

[FR Doc. E7–17457 Filed 8–31–07; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 585

[OTS–2007–0008]

RIN 1550–AC14

Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Final rule.

SUMMARY: OTS is amending its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is March 1, 2008.

DATES: *Effective Date:* The final rule is effective on September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906–7488, or Karen Osterloh, Special Counsel, Regulations and Legislation, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption expires on September 5, 2007, unless a case-by-case exemption is filed prior to that expiration date.

OTS found that the temporary exemption was needed to ensure that the new prohibition did not needlessly disrupt SLHC operations by requiring the immediate termination of existing relationships. OTS designed this exemption to ensure that SLHCs would have sufficient time to determine which persons have convictions or pre-trial diversions involving the described criminal offenses, and to provide a meaningful opportunity for the SLHC or the prohibited person to demonstrate that the person's continued relationship with the SLHC is consistent with the purposes of the statute.

Since the publication of the interim final rule, some SLHCs have contacted OTS to indicate that they have not had adequate time to review all of their existing relationships and file for appropriate permanent exemptions. To avoid needless disruptions of these SLHC operations, OTS is extending the expiration date of the temporary exemption to March 1, 2008. OTS has concluded that this extension of the exemption is consistent with the purposes of section 19(e) of the FDIA.[1]

Regulatory Findings

Notice and Comment and Effective Date

For the reasons set out in the interim final rule,[2] OTS has concluded that: Notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

Regulatory Flexibility Act

For the reasons stated in the interim final rule,[3] OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this extension should not have a significant impact on a substantial number of small entities, as defined in the RFA.

Paperwork Reduction Act

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,[4] OTS has determined that this extension will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Executive Order 12866

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

[1] OTS is continuing to review the public comments submitted on the interim final rule and plans to publish a final rule addressing these comments later this year.

[2] 72 FR at 25953.

[3] 72 FR at 25953–25954.

[4] 72 FR at 25954.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4809) requires the Agencies to use ''plain language'' in all final rules published after January 1, 2000. OTS believes that the final rule containing the extension is presented in a clear and straightforward manner.

List of Subjects in 12 CFR Part 585

Administrative practice and procedure, Holding companies, reporting and recordkeeping requirements, savings associations.

Authority and Issuance

■ For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 585 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

■ 2. Revise § 585.100(b)(2) introductory text to read as follows:

§ 585.100 Who is exempt from the prohibition under this part?

* * * * *

(b) *Temporary exemption.* * * *

* * * * *

(2) This exemption expires on March 1, 2008, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

* * * * *

Dated: August 28, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–17459 Filed 8–31–07; 8:45 am]

BILLING CODE 6720–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Amended Supplemental Order for Expanded Relief.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is issuing an Amended Supplemental Order authorizing members of Singapore Derivatives Trading Ltd (''SGX''), formerly known as Singapore International Monetary Exchange Ltd (''SIMEX''), to solicit and accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by the laws of Singapore to conduct futures business for customers. The Amended Supplemental Order is issued pursuant to Commission Regulation 30.10, which permits the Commission to grant an exemption from certain provisions of Part 30 of the Commission's regulations, and supersedes the Commission's prior Supplemental Order dated September 9, 1999.

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Andrew Chapin, Special Counsel, Division of Clearing and Intermediary Oversight, at (202) 418–5430, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: *lpatent@cftc.gov* or *achapin@cftc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Amended Supplemental Order Granting Expanded Relief Pursuant to Commission Regulation 30.10 for Otherwise Permitted Transactions on All Non-U.S. Exchanges Where Firms Designated by the Singapore Derivatives Trading Ltd Are Authorized by Exchange Regulations To Conduct Futures Business for Customers, Subject to Certain Conditions

On December 30, 1988, the Commission issued an Order granting relief under Regulation 30.10 authorizing designated members of SGX to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on the Exchange.[1] On September 9, 1999, the Commission issued a Supplemental Order expanding the relief to include otherwise permitted transactions on Eurex Deutschland.[2] By letter dated November 30, 2006, SEL petitioned the Commission on behalf of SGX to amend the Supplemental Order to permit members designated by SGX to solicit and accept orders from foreign futures and options customers[3] for otherwise permitted transactions on all non-U.S. exchanges[4] where Exchange Members are authorized by Singapore law to conduct futures and options business for customers, subject to SGX and SGX Members' continued compliance with the terms of the Original Order and with certain specified conditions.[5]

On occasion, the Commission has issued Regulation 30.10 orders and/or supplemental orders that permitted members of an exchange with confirmation of Regulation 30.10 relief to trade on behalf of U.S. customers on other authorized or designated exchanges outside the jurisdiction of the Regulation 30.10 recipient.[6] To ensure that U.S. customers receive adequate protection for transactions intermediated by non-U.S. persons on or subject to the rules of a foreign exchange located outside the jurisdiction of a Regulation 30.10 recipient, the Commission requires the jurisdiction to which the Regulation 30.10 order is directed to demonstrate that such transactions will be regulated as if they were executed on an exchange located within the recipient's jurisdiction.[7] To make this demonstration, the Regulation 30.10 recipient must: (1) Prohibit its regulatees or members from intermediating otherwise permitted transactions for U.S. customers on unapproved foreign exchanges as set

[1] 54 FR 806 (January 10, 1989) (''Original Order'').

[2] 64 FR 50248 (September 16, 1999) (''Supplemental Order''). In December 1999, SIMEX merged with the Stock Exchange of Singapore to form a holding company named the Singapore Exchange Limited (''SEL''). SIMEX was renamed SGX and currently operates two exchanges as a wholly-owned subsidiary of SEL. The first market, called SGX–DT, is dedicated to trading financial futures and option contracts. The second market, called JADE, is the result of a joint venture with the Chicago Board of Trade, Inc., to trade commodity futures and option contracts.

[3] The term ''foreign futures or foreign options customer'' means any person located in the U.S., its territories or possessions, who trades in foreign futures or foreign options.

[4] The term ''non-U.S. exchange'' refers to a foreign board of trade which is defined in Commission Regulation 1.3(ss), 17 CFR 1.3(ss) as: Any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign futures or foreign options transactions are entered into. Thus, contracts that are traded on a market that has been designated as a contract market pursuant to section 5 of the Commodity Exchange Act (''Act'') are not within the scope of this Order.

[5] Letter dated November 30, 2006, from Arul Ramiah, Head, Regulatory Policy for SEL, to Ananda K. Radhakrishnan, Director, Division of Clearing and Intermediary Oversight.

[6] *See, e.g.*, 71 FR 40395 (July 17, 2006) (authorizing members of the Sydney Futures Exchange (''SFE'') to solicit and accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. and non-Australian exchanges where such members are authorized by the regulations of the SFE to conduct futures business for customers).

[7] 64 FR at 50251.

forth under local law, and must specify which exchanges are authorized by local law; (2) represent that regulatees or member firms with U.S. customers will comply with all the terms and conditions of the original Regulation 30.10 Order with respect to transactions entered into on or subject to the rules of a foreign exchange located outside its jurisdiction; and (3) confirm that it has the authority and the ability to enforce its laws, rules and/or regulations with respect to those transactions to the same extent that it conducts such activities on an exchange located within its jurisdiction. The Regulation 30.10 recipient also should specify in its application if there does not exist a specific statute or regulation setting forth a list of authorized or recognized exchanges.[8]

Upon due consideration, the Commission has determined to issue this Amended Supplemental Order permitting SGX Members to which Regulation 30.10 relief has been confirmed by the Commission or by the National Futures Association (''NFA'') to solicit and to accept orders from U.S. customers for otherwise permitted transactions in commodity futures and commodity options (including options on futures) on or subject to the rules of any non-U.S. exchange where such members are authorized by the laws of Singapore to conduct futures business for customers.

The expanded Regulation 30.10 relief provided under this Amended Supplemental Order, however, is contingent on the SGX members' continued compliance with the Original Order, and the SGX's and SGX Members' compliance with the following conditions:

(1) SGX will carry out its compliance, surveillance and rule enforcement activities with respect to solicitations and acceptance of orders by designated Exchange Members of U.S. customers for futures and options business on all non-U.S. exchanges where such members are authorized by the laws of Singapore to conduct futures business for customers to the same extent that it conducts such activities in regard to SGX business;

(2) SGX will cooperate with the Commission with respect to any inquiries concerning any activity which is the subject of this Amended Supplemental Order, including sharing the information specified in Appendix A to the Part 30 regulations, 17 CFR Part 30, on an ''as needed basis,'' on the same basis as set forth in the Original Order;

(3) Each SGX Member firm confirmed for relief under the Original Order seeking to engage in activities that are the subject of this Amended Supplemental Order must agree to provide the books and records related to such activities required to be maintained under the applicable SGX rules and laws in effect in Singapore on the same basis as set forth in the Original Order;

(4) SGX members who apply for confirmation of Regulation 30.10 relief with the National Futures Association must provide and maintain a list of the foreign exchanges where they intend to engage in transactions on behalf of U.S. customers pursuant to relief granted by this Amended Supplemental Order and must agree to abide by the terms and conditions of the Original Order; and

(5) SGX will continue to comply with the terms of the Original Order with respect to transactions effected for U.S. customers on SGX.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth above shall be filed with NFA.[9] Specifically, SGX Members applying for confirmation of Regulation 30.10 relief subsequent to the issuance of this Amended Supplementary Order must submit representations to NFA consistent with condition (3) of this Order, and the list of foreign exchanges required by condition (4), as well as representations required by the Original Order. SGX Member firms that currently operate under the Original Order will be deemed to have consented to condition (3) by effecting transactions pursuant to this Amended Supplemental Order. Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief, including any change in the list of foreign exchanges referred to in condition (4).

The expanded Regulation 30.10 relief provided by this Amended Supplemental Order remains subject to the existing product restrictions under the Act and Commission regulations thereunder including those related to stock indices, foreign government debt and foreign security futures products.[10] The expanded Regulation 30.10 relief provided under this Amended Supplemental Order also is contingent upon the continued compliance by the Monetary Authority of Singapore (''MAS'') with the terms and conditions of the information sharing arrangement with the Commission regarding the Regulation 30.10 activities of the SGX members.[11]

This Amended Supplemental Order is issued based on the information provided to the Commission and its staff. Any changes or material omissions may require the Commission to reconsider the authorization granted in this Amended Supplemental Order.

List of Subjects in 17 CFR Part 30

Commodity Futures, Commodity Options, Foreign Futures and Options.

■ Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

Appendix C to Part 30—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

* * * * *

■ 2. The citation ''Firms designated by the Singapore International Monetary Exchange Limited'' is to be revised as follows:

Firms designated by the Singapore Derivatives Trading Limited.

* * * * *

FR date and citation: [insert date of this release], 72 FR [insert number of page on which this release begins].

* * * * *

■ 3. The following citations are to be added:

Firms designated by the Taiwan Futures Exchange.

FR date and citation: March 28, 2007, 72 FR 14413.

Firms designated by the Tokyo Commodity Exchange.

FR date and citation: February 9, 2006, 71 FR 6759.

Firms designated by the Bolsa de Mercadorias & Futuros.

FR date and citation: July 8, 2002, 67 FR 45056.

Firms designated by Eurex Deutschland.

FR date and citation: May 8, 2002, 67 FR 30785.

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[8] *Id.* at n.20. *See, e.g.*, 67 FR 30785 (May 8, 2002) (authorizing members of Eurex Deutschland (''Eurex'') to solicit and accept orders from U.S. customers for otherwise permitted transactions on all non-U.S. exchanges where such members are authorized by Eurex regulations and German law to conduct futures business for customers).

[9] 62 FR 47792, 47793 (September 11, 1997).

[10] *See, e.g.*, Sections 2(a)(1)(C), (D) and (E) of the Act.

[11] Letter from Neo Boon Sim, Head, Market and Clearing Houses Division, MAS, to Ananda K. Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, dated June 11, 2007. The Commission signed a bilateral Memorandum of Understanding (''MOU'') with MAS on May 16, 2000 concerning Consultation, Co-operation and the Exchange of Information (concluded jointly with the U.S. Securities and Exchange Commission). In addition, MAS also is a signatory to the IOSCO Multilateral MOU.

Issued in Washington, DC on August 24, 2007.

David Stawick,

Secretary of the Commission.

[FR Doc. E7–17195 Filed 8–31–07; 8:45 am]

BILLING CODE 6351–01–P

Proposed Rules

Federal Register
Vol. 72, No. 170
Tuesday, September 4, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27891; Directorate Identifier 2007–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. TFE731–2C, –3B, –3BR, –3C, –3CR, –3D, –3DR, –4R, –5AR, –5BR, –5R, –20R, –20AR, –20BR, –40, –40AR, –40R, and –60 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. (Honeywell) TFE731–2C, –3B, –3BR, –3C, –3CR, –3D, –3DR, –4R, –5AR, –5BR, –5R, –20R, –20AR, –20BR, –40, –40AR, –40R, and –60 series turbofan engines. This proposed AD would require removal from service of certain high pressure (HP) turbine rotor assemblies with part numbers (P/Ns) 3075772–1 and 3060841–1 using a drawdown schedule, and returning them to Honeywell for curvic root radius inspection. This proposed AD results from the manufacturer's report that some HP turbine rotor discs received improperly machined radii in the root of the forward and aft curvic teeth during manufacture. We are proposing this AD to prevent uncontained failure of the HP turbine rotor assembly and damage to the airplane.

DATES: We must receive any comments on this proposed AD by November 5, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.
- You can get the service information identified in this proposed AD from Honeywell Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation), (602) 365–5535 (Commercial Aviation), fax: (602) 365–5577 (General Aviation and Commercial Aviation).
- Also, for technical support regarding the curvic root dimensional inspection criteria, contact the Technical Operations Center: telephone: (800) 601–3099 (U.S.) or (602) 365–3099 (International) and press option #9; e-mail: *AeroTechSupport@Honeywell.com;* or fax: (602) 365–3343.

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

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *joseph.costa@faa.gov;* telephone: (562) 627–5246; fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–27891; Directorate Identifier 2007–NE–14–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

In June of 2006, we became aware of a manufacturing audit that found that some HP turbine rotor discs, part numbers (P/Ns) 3075772–1 and 3060841–1, received improperly machined radii in the root of the forward and aft curvic teeth. We have determined that the improperly machined radii will cause a higher stress in the curvic area of the HP turbine rotor disc than originally calculated. Although no reports of cracked HP turbine rotor discs due to improperly machined radii have been received, this higher stress reduces the calculated low-cycle-fatigue life limit, to below the current published life limit. This condition, if not corrected, could result in uncontained failure of the HP turbine rotor assembly and damage to the airplane. Honeywell established a serial number list of suspect HP turbine rotor discs possibly having the improperly machined radii. This proposed AD would require operators to

send suspect HP turbine rotor discs to Honeywell for curvic root inspection before the discs are eligible for reinstallation in an engine. Since the dimensional inspection requires proprietary tooling and methods, Honeywell is specified as the sole provider of the curvic root inspections. Other repair or maintenance facilities that believe they are capable of conducting the inspection may apply for an alternative method of compliance (AMOC) in accordance with the AMOC paragraph in the proposed AD.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell Alert Service Bulletin No. TFE731–A72–5185, dated July 5, 2006, and Service Bulletin No. TFE731–72–3720, dated July 5, 2006. These service bulletins contain the serial numbers of suspect HP turbine rotor discs, and describe procedures for removing the suspect HP turbine rotor assemblies from service.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removal of certain HP turbine rotor assemblies from service using a drawdown schedule and returning them to Honeywell Engines, Systems, and Services for curvic root radius inspection. The proposed AD would require you to use the service information described previously to identify suspect HP turbine rotor discs by serial number.

Costs of Compliance

We estimate that this proposed AD would affect 400 HP turbine rotor discs installed in TFE731–20R, –20AR, –20BR, –40, –40AR, –40R, and –60 series turbofan engines, and 170 HP turbine rotor discs installed in TFE731–2C, –3B, –3BR, –3C, –3CR, –3D, –3DR, –4R, –5AR, –5BR, and –5R series turbofan engines, installed in airplanes of U.S. registry. We also estimate that it would take about 42 work-hours per engine to perform the proposed actions at an unscheduled removal, and about 2 work-hours at a scheduled removal. The average labor rate is $80 per work-hour. Required parts would cost about $46,535 per engine. We estimate that 50 percent of the HP turbine rotor discs will fail the curvic root radius inspection. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $13,490,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.): Docket No. FAA–2007–27891; Directorate Identifier 2007–NE–14–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 5, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. (Honeywell) TFE731–2C, –3B, –3BR, –3C, –3CR, –3D, –3DR, –4R, –5AR, –5BR, –5R, –20R, –20AR, –20BR, –40, –40AR, –40R, and –60 series turbofan engines with certain high pressure (HP) turbine rotor discs part numbers and serial numbers. These engines are installed on, but not limited to, the following airplanes:

Avions Marcel Dassault Mystere–Falcon 10 and 50 Series
Cessna Model 650; Citations III, VI, and VII
Dassault–Aviation 20, 50, 50EX, 900, MF900, and 900EX (900DX) Series
Gulfstream Aerospace LP (formerly IAI) 1125 Westwind Astra, Astra SPX, Gulfstream 100 Series
Israel Aircraft Industries (IAI) 1124 Series (Westwind 1124)
Learjet 31, 35, 36, 45 (or Learjet 40), and 55 Series
Lockheed–Georgia 3329–25 Series (731 Jetstar, Jetstar II)
Raytheon Corporate Jets (formerly British Aerospace) Hawker 800 and 850 Series
Sabreliner NA–265–65 (Sabreliner 65)

Unsafe Condition

(d) This AD results from a report that some HP turbine rotor discs received improperly machined radii in the root of the forward and aft curvic teeth during manufacture. We are issuing this AD to prevent uncontained failure of the HP turbine rotor assembly and damage to the airplane.

Compliance

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

TFE731–2C, –3B, –3BR, –3C, –3CR, –3D, –3DR, –4R, –5AR, –5BR, and –5R Series Turbofan Engines

(f) For TFE731–2C, –3B, –3BR, –3C, –3CR, –3D, –3DR, –4R, –5AR, –5BR, and –5R series turbofan engines, remove HP turbine rotor assemblies from service containing HP turbine rotor discs, part number (P/N) 3075772–1, having any serial number (SN) in Table 1 of Honeywell Service Bulletin (SB) No. TFE731–72–3720, dated July 5, 2006. Use the following drawdown schedule:

(1) For HP turbine discs with 4,200 cycles-since-new (CSN) or more on the effective date of this AD, remove HP turbine rotor assemblies within 100 cycles-in-service (CIS) after the effective date of this AD.

(2) For HP turbine discs with fewer than 4,200 CSN on the effective date of this AD, remove HP turbine rotor assemblies at the next access to the HP turbine rotor discs, but not to exceed 4,300 CSN.

TFE731–20R, –20AR, –20BR, –40, –40AR, –40R, and –60 Series Turbofan Engines

(g) For TFE731–20R, –20AR, –20BR, –40, –40AR, –40R, and –60 series turbofan engines, remove HP turbine rotor assemblies from service containing HP turbine rotor discs, P/N 3060841–1, having any SN in Table 1 of Honeywell Alert SB No. TFE731–A72–5185, dated July 5, 2006. Use the following drawdown schedule:

(1) For HP turbine discs with 3,200 CSN or more on the effective date of this AD, remove HP turbine rotor assemblies within 100 CIS after the effective date of this AD.

(2) For HP turbine discs with fewer than 3,200 CSN on the effective date of this AD, remove HP turbine rotor assemblies at the next access to the turbine rotor discs, but not to exceed 3,300 CSN.

For All Engines

(h) HP turbine rotor discs removed per paragraphs (f) and (g) of this AD must pass a curvic root radius inspection performed by Honeywell Engines, Systems and Services, Phoenix, Arizona, Certificate Repair Station No. ZN3R030M, before the discs are eligible for reinstallation in an engine.

(i) For the purposes of this AD, access to the HP turbine rotor discs is defined as the removal of the HP turbine rotor assembly from the engine.

Alternative Methods of Compliance

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

Related Information

(k) Contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *joseph.costa@faa.gov*; telephone: (562) 627–5246; fax: (562) 627–5210, for more information about this AD.

(l) For more information regarding the engine manufacturer's accomplishment instructions or material information, refer to Honeywell Alert SB No. TFE731–A72–5185, dated July 5, 2006, and SB No. TFE731–72–3720, dated July 5, 2006.

Issued in Burlington, Massachusetts, on August 28, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–17384 Filed 8–31–07; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2006–0920, FRL–8462–7]

Approval and Promulgation of Implementation Plans; New Jersey; Zero Emission Vehicle Component of the Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve, through model year 2011, New Jersey's low emission vehicle program related to the manufacture and sale of zero-emission vehicles, consistent with California's current low emission vehicle regulations. EPA previously approved New Jersey's low emission vehicle program, but did not take action on the zero-emission vehicle provisions. The intended effect of this action is to approve, as consistent with section 110(a)(2) of the Clean Air Act, a control strategy that will help New Jersey achieve attainment of the National Ambient Air Quality Standard for ozone.

DATES: Comments must be received on or before October 4, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2006–0920, by one of the following methods: *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

E-mail: Werner.Raymond@epa.gov.

Fax: 212–637–3901.

Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Hand Delivery: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2006–0920. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Matthew Laurita, *laurita.matthew@epa.gov* at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, telephone number (212) 637–3895, fax number (212) 637–3901.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Public Access Center, 401 East State Street 1st Floor, Trenton, New Jersey 08625.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. History of New Jersey's Low Emission Vehicle Program
II. California's Zero-Emission Vehicle Regulations
III. Status of New Jersey's Zero-Emission Vehicle Regulations
IV. Proposed EPA Action
V. Statutory and Executive Order Reviews

I. History of New Jersey's Low Emission Vehicle Program

In January 2004, the New Jersey Legislature passed legislation requiring the New Jersey Department of Environmental Protection (NJDEP) to adopt the California Low Emission Vehicle (LEV) program, known as the LEV II program. Pursuant to this legislation, New Jersey promulgated regulations to adopt a LEV program identical to California's LEV II program. New Jersey's regulations were adopted on November 28, 2005 and published in the *New Jersey Register* on January 17, 2006. On June 2, 2006, New Jersey submitted a state implementation plan (SIP) revision to EPA, seeking federal approval of the regulations.

On August 27, 2007, EPA approved New Jersey's LEV program into the New Jersey SIP, with the exception of two provisions (72 FR 48936). EPA took no action on the portions of New Jersey's LEV program related to the manufacture and sale of Zero-Emission Vehicles (ZEV), commonly referred to as the ''ZEV mandate,'' and portions of the rule related to emission standards for greenhouse gases. Today EPA is proposing to approve the ZEV portion of New Jersey's LEV program into the SIP, through model year 2011.

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, under section 209(b) of the CAA, EPA may grant a waiver of the section 209(a) prohibition to the State of California, thereby allowing California to adopt its own motor vehicle emissions standards. Before EPA may grant such a waiver, section 209(b) requires California to show that its standards will be ''* * * in the aggregate, at least as protective of public health and welfare as applicable Federal standards* * *.'' Section 209(b) further provides that EPA will grant a waiver unless it finds that: (1) The State's determination is ''arbitrary and capricious,'' (2) the State ''does not need such State standards to meet compelling and extraordinary conditions,'' or (3) the State's standards and accompanying enforcement procedures are ''not consistent'' with CAA section 202(a).

Section 177 of the CAA allows other states to adopt and enforce California's standards relating to the control of emissions from new motor vehicles, provided that, among other things, such state standards are identical to the California standards for which a waiver has been granted under CAA section 209(b). In addition to the identicality requirement, the state must adopt such standards at least two years prior to the commencement of the model year to which the standards will apply. All SIP revisions submitted to EPA for approval must also meet the requirements of CAA section 110. In our August 27, 2007, Final Rule (72 FR 48936), we found that New Jersey had met the requirements of CAA sections 177 and 110.

II. California's Zero-Emission Vehicle Regulations

The California Air Resources Board (CARB) adopted the first generation LEV regulations in 1990, which were effective through the 2003 model year. CARB adopted California's second generation LEV regulations (LEV II) following a November 1998 hearing. Subsequent to the adoption of the LEV II program in February 2000, the U.S. EPA adopted separate Federal standards known as the Tier 2 regulations (65 FR 6698). In December 2000, CARB modified the LEV II program to take advantage of some elements of the Federal Tier 2 regulations to ensure that only the cleanest vehicle models would continue to be sold in California.

In addition to LEV II emission requirements, minimum percentages of passenger cars and the lightest light-duty trucks, marketed in California by large or intermediate volume manufacturers, must be ZEVs. This is referred to as the ZEV mandate. California has modified the ZEV mandate several times since it took effect. In a December 19, 2003 revision to the ZEV regulation, CARB put in place an alternative compliance program (ACP) to provide auto manufacturers with several options to meet the ZEV mandate. The ACP established ZEV credit multipliers to allow auto manufacturers to take credit for meeting the ZEV mandate by selling more Partial Zero-Emission Vehicles (PZEVs) and Advanced-Technology Partial Zero-Emission Vehicles (ATPZEVs) than they are otherwise required to sell.

EPA granted California a section 209(b) waiver for its LEV II program on April 22, 2003 (68 FR 19811), but did not consider the ZEV regulations in its decision. In a September 23, 2004 letter to EPA, CARB requested that EPA find the 1999, 2001, and 2003 amendments to the ZEV regulations within the scope of previous waivers issued to California for model year 2003 through 2006 vehicles. In addition, CARB requested that EPA grant a section 209(b) waiver to enforce the ZEV regulations for 2007 and subsequent model year vehicles. In a December 28, 2006, notice (71 FR 78190), EPA found the 1999 through 2003 ZEV amendments to be within the scope of previous waivers as they pertain to 2003 through 2006 model year vehicles. In addition, EPA granted California's request for a section 209(b) waiver to enforce provisions of the ZEV regulations for model years 2007 through 2011. This waiver allows for other states to adopt and enforce ZEV regulations that are identical to California's, effective through model year 2011.

III. Status of New Jersey's Zero-Emission Vehicle Regulations

In New Jersey's November 28, 2005 adoption of the California LEV II program, the State adopted the entirety of California's regulations by reference, including the ZEV regulations. At that time, EPA had not issued a section 209(b) waiver of Federal pre-emption that would allow California to enforce the provisions of its ZEV regulations. Therefore, at that time New Jersey was also unable to enforce those provisions. When EPA issued its December 28, 2006 waiver to California, New Jersey became eligible to enforce its identical ZEV regulations for model years 2009 through 2011.

New Jersey requested that EPA approve the ZEV regulations into the SIP in a comment on EPA's March 21, 2007 Notice of Proposed Rulemaking (72 FR 13227), where EPA proposed approval of New Jersey's LEV program without the ZEV and greenhouse gas provisions. EPA has found that New Jersey's ZEV regulations meet the requirements of CAA Section 177 for model years 2009 through 2011, and is therefore proposing to approve the ZEV regulations into the New Jersey SIP for only those model years.

IV. Proposed EPA Action

EPA is proposing to approve the ZEV portion of New Jersey's low emission vehicle program that is identical to the California standards for which a waiver has been granted. Because the waiver granted for the ZEV portion of the program is limited to model year 2011 and earlier vehicles, EPA is only proposing approval of the ZEV provisions of New Jersey's LEV program for model years 2009 through 2011.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely 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.). 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 (Public Law 104–4).

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). 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 CAA. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 17, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7–17411 Filed 8–31–07; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 72, No. 170
Tuesday, September 4, 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

Forest Service

Deschutes Provincial Advisory Committee (DPAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on September 27th, 2007, starting at 8 a.m. at the Sisters Ranger District, Pine Street and Highway 20, Sisters, Oregon. It will be a 2-hour business meeting and then a joint field trip with Central Oregon Partnership for Wildfire Risk Reduction (COPWRR) to monitor the Green Thin Project. The trip is scheduled to end at 4:30 p.m. in Sisters. All Deschutes Province Advisory Committee Meetings are open to the public and an open public forum is scheduled from 4 to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Chris Mickle, Province Liaison, Crescent Ranger District, Highway 97, Crescent, Oregon, 97733, Phone (541) 433–3216.

John Allen,

Deschutes National Forest Supervisor.

[FR Doc. 07–4299 Filed 8–31–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet at Surftides Inn, Lincoln City. The agenda includes: Bureau of Land Management Western Oregon Planning Revision, Review of WOPR Issues and work towards recommendation, Public Comment.

DATES: The meeting will be held September 13, 2007 beginning at 9 a.m.

ADDRESSES: The meeting will be held at 2945 NW. Jetty Ave., Lincoln City, OR 97367.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Suislaw National Forest Supervisor, 4077 SW. Research Way, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 2 p.m. for fifteen minutes. The meeting is expected to adjourn around 3 p.m.

Dated: August 28, 2007.

Chip Weber,

Acting Forest Supervisor.

[FR Doc. 07–4301 Filed 8–31–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Corvallis, OR. The purpose of the meeting is to Review RAC FY08 Business, Elect Chairperson, Set FY08 Overhead Rate, Information Share, Public Forum and 2008 Project Review/Recommendations.

DATES: The meeting will be held September 21, 2007 beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Siuslaw National Forest Supervisor's Office, 4077 SW Research Way, Corvallis, Oregon.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/928–7085 or write to Forest Supervisor, Siuslaw National Forest, 4077 SW Research Way, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin before 2008 project review.

Dated: August 28, 2007.

Chip Weber,

Acting Forest Supervisor.

[FR Doc. 07–4298 Filed 8–31–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison-Beaverhead Advisory Committee Meeting

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393, as amended by Section 5401 of Public Law 110–28, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007) the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee will meet on Wednesday, September 19, 2007, from 10 a.m. to 4 p.m., in Dillon, Montana, for a business meeting. The meeting is open to the public.

DATES: Wednesday, September 19, 2007.

ADDRESSES: The meeting will be held at the USDA Service Center, 420 Barrett Street, Dillon, Montana.

FOR FURTHER INFORMATION CONTACT: Bruce Ramsey, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include making decisions on projects to fund under Title II of Public Law 106–393, and other business. If the meeting location changes, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: August 28, 2007.

Bruce Ramsey,

Forest Supervisor.

[FR Doc. 07–4305 Filed 8–31–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Amarillo (TX), Cairo (IL), Louisiana, North Carolina, and Belmond (IA) Areas, and Opportunity for Designation To Provide Official Services in the North Central Texas Region

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: We are announcing designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (USGSA): Amarillo Grain Exchange, Inc. (Amarillo); Cairo Grain Inspection Agency, Inc. (Cairo); Louisiana Department of Agriculture and Forestry (Louisiana); North Carolina Department of Agriculture (North Carolina); and D. R. Schaal Agency, Inc. (Schaal). Amarillo has asked GIPSA to amend its designation to remove the north central Texas region from their assigned geographic area. GIPSA is asking for persons interested in providing official services in north central Texas, currently served by Amarillo, to submit an application for designation.

DATES: October 1, 2007 is the effective date for the designations. Applications for the north central Texas area must be received on or before October 4, 2007.

ADDRESSES: We invite you to submit applications for designation to provide official services in the North Central Texas Region. You may submit applications by any of the following methods:

- *Hand Delivery or Courier:* Deliver to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Fax:* Send by facsimile transmission to (202) 690–2755, attention: Karen Guagliardo.
- *E-mail:* Send via electronic mail to *Karen.W.Guagliardo@usda.gov*.
- *Mail:* Send hardcopy to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

Read Applications: All applications will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov*.

SUPPLEMENTARY INFORMATION: In the March 7, 2007, **Federal Register** (72 FR 10138–10139), we requested applications for designation to provide official services in the geographic areas assigned to the official agencies named above. Applications were due by April 6, 2007.

Amarillo, Cairo, Louisiana, North Carolina, and Schaal were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

We evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of USGSA (7 U.S.C. 79 (f)) and Section 7(f)(l)(B), determined that Amarillo, Cairo, Louisiana, North Carolina, and Schaal are able to provide official services in the geographic areas specified in March 7, 2007, **Federal Register**, for which they applied. These designation actions to provide official services are effective October 1, 2007, and terminate September 30, 2010, for Amarillo, Cairo, Louisiana, North Carolina, and Schaal. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start–end
Amarillo	Amarillo, TX, 806–372–8511	10/01/2007–9/30/2010
	Additional Location: Guymon, OK	
Cairo	Cairo, IL, 618–734–0689	10/01/2007–9/30/2010
Louisiana	Baton Rouge, LA, 337–948–0230	10/01/2007–9/30/2010
North Carolina	Raleigh, NC, 919–733–4491	10/01/2007–9/30/2010
Schaal	Belmond, IA, 641–444–3122	10/01/2007–9/30/2010
	Additional Location: Albert Lea, MN	

Section 7(f)(1) of the United States Grain Standards Act, as amended (USGSA), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)(1)).

Section 7(g) (1) of USGSA provides that designations of official agencies will terminate not later than three years and may be renewed according to the criteria and procedures prescribed in Section 7(f) of USGSA.

Amarillo is currently designated for October 1, 2004 through September 30, 2007, and this notice announces their designation effective October 1, 2007. Amarillo has asked GIPSA to remove the north central Texas region from its assigned geographical area. The north central Texas region is comprised of the following nineteen counties: Archer, Baylor, Callahan, Clay, Cottle, Fisher, Foard, Hardeman, Haskell, Jones, King, Knox, Nolan, Shackelford, Stonewall, Taylor, Throckmorton, Wichita, and Wilbarger.

Opportunity for Designation

Interested persons may apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the USGSA 97 U.S.C. 79(f)(2)), and 9 CFR 800.196(d) regulations. To apply for designation, contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web Site *http://www.gipsa.usda.gov*.

Authority: 7 U.S.C. 71 *et seq.*

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–17279 Filed 8–31–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Owensboro (KY), Bloomington (IL), Iowa Falls (IA), Casa Grande (AZ), Fargo (ND), Grand Forks (ND), and Plainview (TX) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on March 31, 2008. We are asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. We are also asking for comments on the quality of services provided by these currently designated agencies: J. W. Barton Grain Inspection Service, Inc. (Barton); Central Illinois Grain Inspection, Inc. (Central Illinois); Central Iowa Grain Inspection Service, Inc. (Central Iowa); Farwell Commodity and Grain Services, Inc (Farwell Southwest); North Dakota Grain Inspection Service, Inc. (North Dakota); Northern Plains Grain Inspection Service, Inc. (Northern Plains); and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATES: Applications and comments must be received on or before October 4, 2007.

ADDRESSES: We invite you to submit applications and comments on this notice. You may submit applications and comments by any of the following methods:

- *Hand Delivery or Courier:* Deliver to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Fax:* Send by facsimile transmission to (202) 690–2755, attention: Karen Guagliardo.
- *E-mail:* Send via electronic mail to *Karen.W.Guagliardo@usda.gov*.
- *Mail:* Send hardcopy to Karen Guagliardo, Review Branch Chief, Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 7(f)(1) of the United States Grain Standards Act, as amended (USGSA), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)(1)).

Section 7(g)(1) of USGSA provides that designations of official agencies will terminate not later than three years and may be renewed according to the criteria and procedures prescribed in Section 7(f) of USGSA.

CURRENT DESIGNATIONS BEING ANNOUNCED FOR RENEWAL

Official agency	Main office	Designation start	Designation end
Barton	Owensboro, KY	04/01/2005 ..	03/31/2008
Central Illinois	Bloomington, IL	04/01/2005 ..	03/31/2008
Central Iowa	Iowa Falls, IA	04/01/2005 ..	03/31/2008
Farwell Southwest	Casa Grande, AZ	04/01/2005 ..	03/31/2008
North Dakota	Fargo, ND	04/01/2005 ..	03/31/2008
Northern Plains	Grand Forks, ND	04/01/2005 ..	03/31/2008
Plainview	Plainview, TX	04/01/2005 ..	03/31/2008

Barton

In accordance with Section 7(f)(2) of USGSA (7 U.S.C. 79(f)(2)) the following geographic area, in the States of Indiana, Kentucky, and Tennessee, is assigned to Barton.

- Clark, Crawford, Floyd, Harrison, Jackson, Jennings, Jefferson, Lawrence, Martin, Orange, Perry, Scott, Spencer, and Washington Counties, Indiana.

In Kentucky:

- Bounded on the North by the northern Daviess, Hancock, Breckinridge, Meade, Hardin, Jefferson, Oldham, Trimble, and Carroll County lines;
- Bounded on the East by the eastern Carroll, Henry, Franklin, Scott, Fayette, Jessamine, Woodford, Anderson, Nelson, Larue, Hart, Barren, and Allen County lines;
- Bounded on the South by the southern Allen and Simpson County lines; and
- Bounded on the West by the western Simpson and Warren County lines; the southern Butler and Muhlenberg County lines; the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

In Tennessee:

- Bounded on the North by the northern Tennessee State line from Sumner County east;
- Bounded on the East by the eastern Tennessee State line southwest;
- Bounded on the South by the southern Tennessee State line west to the western Giles County line; and
- Bounded on the West by the western Giles, Maury, and Williamson County lines North; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

Central Illinois

In accordance with Section 7(f) (2) of USGSA (7 U.S.C. 79(f)(2)), the following geographic area, in the State of Illinois, is assigned to Central Illinois.

- Bounded on the North by State Route 18 east to U.S. Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; the Livingston County line east to State Route 47;
- Bounded on the East by State Route 47 south to State Route 116; State Route 116 west to Pontiac, which intersects with a straight line running north and south through Arrowsmith to the southern McLean County line;
- Bounded on the South by the southern McLean County line; the eastern Logan County line south to State Route 10; State Route 10 west to the Logan County line; the western Logan County line; the southern Tazewell County line; and
- Bounded on the West by the western Tazewell County line; the western Peoria County line north to Interstate 74; Interstate 74 southeast to State Route 116; State Route 116 north to State Route 26; State Route 26 north to State Route 18.

• Central Illinois' assigned geographic area does not include the following grain elevator inside Central Illinois' area which has been and will continue to be serviced by the following official agency: Springfield Grain Inspection, Inc.: East Lincoln Farmers Grain Co., Lincoln, Logan County, Illinois.

Central Iowa

In accordance with Section 7(f)(2) of USGSA (7 U.S.C. 79(f)(2)), the following geographic area, in the State of Iowa, is assigned to Central Iowa.

• Bounded on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east to T47; T47 south to C33; C33 east to T64; T64 north to B60; B60 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line; and the western and northern Howard County lines.

• Bounded on the East by the eastern Howard and Chickasaw County lines; the eastern and southern Bremer County lines; V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe, and Appanoose County lines;

• Bounded on the South by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines;

• Bounded on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30.

• The following grain elevators, located outside of the above contiguous geographic area, are part of this geographic area assignment: Agvantage F. S., Chapin, Franklin County; and Five Star Coop, Rockwell, Cerro Gordo County (located inside D. R. Schaal Agency's area).

• Central Iowa's assigned geographic area does not include the following grain elevators inside Central Iowa's area which have been and will continue to be serviced by the following official agencies:

1. Sioux City Inspection and Weighing Service Company: West Central Coop, Boxholm, Boone County; and

2. Omaha Grain Inspection Service, Inc.: Hancock Elevator, Elliot, Montgomery County; and Hancock Elevator (two elevators), Griswold, Cass County.

Farwell Southwest

In accordance with Section 7(f)(2) of USGSA (7 U.S.C. 79(f)(2)), the following geographic area, in the States of Arizona and California, is assigned to Farwell Southwest.

• Maricopa, Pinal, Santa Cruz, and Yuma Counties, Arizona.

In California:

• Bounded on the North by the northern San Luis Obispo, Kings, Fresno, Merced, Madera, and Inyo County lines east to the eastern California State line;

• Bounded on the East by the eastern California State line south to the southern California State line;

• Bounded on the South by the southern California State line west to the western California State line; and

• Bounded on the West by the western California State line north to the northern San Luis Obispo County line.

• Farwell Southwest's assigned geographic area does not include the export port locations inside Farwell Southwest's area which are serviced by GIPSA.

North Dakota

In accordance with Section 7(f)(2) of USGSA (7 U.S.C. 79(f)(2)), the following geographic area, in the States of Illinois, Minnesota and North Dakota, is assigned to North Dakota.

In Illinois:

• Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;

• Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

• Bounded on the West by the Mississippi River north to the northern Calhoun County line;

• Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

In Minnesota:

• Koochiching, St. Louis, Lake, Cook, Itasca, Norman, Mahnomen, Hubbard, Cass, Clay, Becker, Wadena, Crow Wing, Aitkin, Carlton, Wilkin, and Otter Tail Counties, excluding those export port locations served by GIPSA.

In North Dakota:

• Bounded on the North by the northern Steele County line from State Route 32 east; the northern Steele and Traill County lines east to the North Dakota State line;

• Bounded on the East by the eastern North Dakota State line;

• Bounded on the South by the southern North Dakota State line west to State Route 1; and

• Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

Northern Plains

In accordance with Section 7(f)(2) of USGSA (7 U.S.C. 79(f)(2)), the following geographic area, in the States of Minnesota and North Dakota, is assigned to Northern Plains.

In Minnesota:

• Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Pennington, Red Lake, and Clearwater Counties.

• Bounded on the North by the North Dakota State line;

• Bounded on the East by the North Dakota State line south to the southern Grand Forks County line;

• Bounded on the South by the southern Grand Forks and Nelson

County lines west to the western Nelson County line; the western Nelson County line north to the southern Benson County line, the southern Benson and Pierce County lines west to State Route 3; and

• Bounded on the West by State Route 3 north to the southern Rolette County line; the southern Rolette County line west to the western Rolette County line to the north to the North Dakota State line.

Plainview

In accordance with Section 7(f)(2) of USGSA (7 U.S.C. 79(f)(2)), the following geographic area, in the State of Texas, is assigned Plainview.

• Bounded on the North by the northern Deaf Smith County line east to U.S. Route 385; U.S. Route 385 south to FM 1062; FM 1062 east to State Route 217; State Route 217 east to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River southeast to the Briscoe County line; the northern Briscoe County line; the northern Hall County line east to U.S. Route 287;

• Bounded on the East by U.S. Route 287 southeast to the eastern Hall County line; the eastern Hall, Motley, Dickens, Kent, Scurry, and Mitchell County lines;

• Bounded on the South by the southern Mitchell, Howard, Martin, and Andrews County lines; and

• Bounded on the West by the western Andrews, Gaines, and Yoakum County lines; the northern Yoakum and Terry county lines; the western Lubbock County line; the western Hale County line north to FM 37; FM 37 west to U.S. Route 84; U.S. Route 84 northwest to FM 303; FM 303 north to U.S. Route 70; U.S. Route 70 west to the Lamb County line; the western and northern Lamb County lines; the western Castro County line; the southern Deaf Smith County line west to State Route 214; State Route 214 north to the northern Deaf Smith County line.

Opportunity for Designation

Interested persons, including Barton, Central Illinois, Central Iowa, Farwell Southwest, North Dakota, Northern Plains, and Plainview, may apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of USGSA (7 U.S.C. 79(f)(2)), and 9 CFR 800.196(d) regulations. Designation in the specified geographic areas is for the period beginning April 1, 2008, and ending March 31, 2011. To apply for designation, contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *http://www.gipsa.usda.gov*.

Request for Comments

We are also publishing this notice to provide interested persons the opportunity to present comments on the quality of services provided by the Barton, Central Illinois, Central Iowa, Farwell Southwest, North Dakota, Northern Plains, and Plainview official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data for support or objection to the designation of the applicants. Submit all comments to the Compliance Division at the above address.

In determining which applicant will be designated, we will consider applications, comments, and other available information.

Authority: 7 U.S.C. 71 *et seq.*

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–17297 Filed 8–31–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review:

Not later than the last day of September 2007[1], interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping Duty Proceedings	Period
ARGENTINA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–357–814	9/1/06 - 8/31/07
BELARUS: Steel Concrete Reinforcing Bars.	
A–822–804	9/1/06 - 8/31/07
INDIA: Certain Lined Paper Products.	
A–533–843	4/17/06 - 8/31/07
INDONESIA: Certain Lined Paper Products.	
A–560–818	3/27/06 - 8/31/07
INDONESIA: Steel Concrete Reinforcing Bars.	
A–560–811	9/1/06 - 8/31/07
ITALY: Stainless Steel Wire Rod.	
A–475–820	9/1/06 - 8/31/07
JAPAN: Stainless Steel Wire Rod.	
A–588–843	9/1/06 - 8/31/07
LATVIA: Steel Concrete Reinforcing Bars.	
A–449–804	9/1/06 - 8/31/07

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Antidumping Duty Proceedings	Period
MOLDOVA: Steel Concrete Reinforcing Bars.	
A–841–804	9/1/06 - 8/31/07
POLAND: Steel Concrete Reinforcing Bars.	
A–455–803	9/1/06 - 8/31/07
REPUBLIC OF KOREA: Stainless Steel Wire Rod.	
A–580–829	9/1/06 - 8/31/07
REPUBLIC OF KOREA: Steel Concrete Reinforcing Bars.	
A–580–844	9/1/06 - 9/6/06
SOUTH AFRICA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–791–809	9/1/06 - 8/31/07
SPAIN: Stainless Steel Wire Rod.	
A–469–807	9/1/06 - 8/31/07
SWEDEN: Stainless Steel Wire Rod.	
A–401–806	9/1/06 - 4/22/07
TAIWAN: Stainless Steel Wire Rod.	
A–583–828	9/1/06 - 8/31/07
THE PEOPLE'S REPUBLIC OF CHINA: Foundry Coke.	
A–570–862	9/1/06 - 8/31/07
THE PEOPLE'S REPUBLIC OF CHINA: Freshwater Crawfish Tail Meat.	
A–570–848	9/1/06 - 8/31/07
THE PEOPLE'S REPUBLIC OF CHINA: Greige Polyester/Cotton Printcloth.	
A–570–101	9/1/06 - 8/31/07
THE PEOPLE'S REPUBLIC OF CHINA: Certain Lined Paper Products.	
A–570–901	4/17/06 - 8/31/07
THE PEOPLE'S REPUBLIC OF CHINA: Steel Concrete Reinforcing Bars.	
A–570–860	9/1/06 - 8/31/07
UKRAINE: Silicomanganese.	
A–823–805	9/1/06 - 8/31/07
UKRAINE: Solid Agricultural Grade Ammonium Nitrate.	
A–823–810	9/1/06 - 8/31/07
UKRAINE: Steel Concrete Reinforcing Bars.	
A–823–809	9/1/06 - 8/31/07
Countervailing Duty Proceedings.	
ARGENTINA: Certain Hot–Rolled Carbon Steel Flat Products.	
C–357–815	1/1/06 - 12/31/06
BRAZIL: Hot–Rolled Carbon Steel Flat Products.	
C–351–829	1/1/06 - 12/31/06
INDIA: Certain Lined Paper Products.	
C–533–844	6/15/06 - 12/31/06
INDONESIA: Certain Lined Paper Products.	
C–560–819	2/13/06 - 12/31/06
Suspension Agreements.	
None..	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building.

Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2007. If the Department does not receive, by the last day of September 2007, a request for

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 23, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–17463 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of Upcoming Sunset Reviews.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for October 2007

The following Sunset Reviews are scheduled for initiation in October 2007 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Sulfanilic Acid from Hungary (A–437–804)	Brandon Farlander (202) 482–0182
Sulfanilic Acid from Portugal (A–471–806)	Brandon Farlander (202) 482–0182
Countervailing Duty Proceedings.	
Sulfanilic Acid from Hungary (C–437–805)	Brandon Farlander (202) 482–0182
Suspended Investigations.	
No Sunset Reviews of suspended investigations are scheduled for initiation in October 2007..	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 23, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–17442 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (''Sunset'') Reviews

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same orders.

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy*

Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–351–832	731–TA–953	Brazil	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
A–122–840	731–TA–954	Canada	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
A–560–815	731–TA–957	Indonesia	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
A–201–830	731–TA–958	Mexico	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
A–841–805	731–TA–959	Moldova	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
A–274–804	731–TA–961	Trinidad & Tobago	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
A–823–812	731–TA–962	Ukraine	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
C–351–833	701–TA–417	Brazil	Carbon and Certain Alloy Steel Wire Rod	Brandon Farlander (202) 482–0182
Suspended Investigations.				
No Sunset Reviews of suspended investigations are scheduled for initiation in September 2007..				

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset Internet Web site at the following address: ''http://ia.ita.doc.gov/sunset/.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

For sunset reviews of countervailing duty orders, parties wishing the Department to consider arguments that countervailable subsidy programs have been terminated must include with their substantive responses information and documentation addressing whether the changes to the program were (1) limited to an individual firm or firms and (2) effected by an official act of the government. Further, a party claiming program termination is expected to document that there are no residual benefits under the program and that substitute programs have not been introduced. *Cf.* 19 CFR 351.526(b) and (d). If a party maintains that any of the subsidies countervailed by the Department were not conferred pursuant to a subsidy program, that party should nevertheless address the applicability of the factors set forth in 19 CFR 351.526(b) and (d). Similarly, parties wishing the Department to consider whether a company's change in ownership has extinguished the benefit from prior non–recurring, allocable, subsidies must include with their substantive responses information and documentation supporting their claim that all or almost all of the company's shares or assets were sold in an arm's length transaction, at a price representing fair market value, as described in the *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003) (''*Modification Notice*''). *See Modification Notice* for a discussion of the types of information and documentation the Department requires.

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's

conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 23, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–17455 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey from Argentina: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is rescinding in part the administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2005, to November 30, 2006 with respect to Mielar S.A. (Mielar)/ Compania Apicola Argentina (CAA).[1] This partial rescission is based on the withdrawal of the requests for review by the interested parties that requested the review. Additionally, the Department is extending the preliminary results of this administrative review to no later than December 20, 2007.

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2657 and (202) 482–0649, respectively.

BACKGROUND: On December 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on, *inter alia*, honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006). In response, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) timely requested an administrative review of the antidumping duty order on honey from Argentina for the December 1, 2005, through November 30, 2006 period of review (POR). The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by nine Argentine producers/exporters. In addition, the Department received timely requests for review from six Argentine exporters included in the petitioners' request and one timely request from a producer/exporter that was not included in petitioners' requests for review.

On February 2, 2007, the Department initiated a review on the ten companies[2] for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On March 27, 2007, the Department indicated that it was selecting for review the four producers/ exporters with the largest export volume during the POR: Asociacion de Cooperativas Argentinas (ACA), Mielar/ CAA, Nexco S.A. (Nexco), and Seylinco, S.A. (Seylinco). *See* the memorandum, ''Selection of Respondents'' to Stephen J. Claeys, dated March 27, 2007 (Selection Memorandum). Based on the timely withdrawal of requests for review from the requesting parties, on June 19, 2007, the Department rescinded this review with respect to four companies, one of which was Nexco. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 33740 (June 19, 2007).

On July 17, 2007, petitioners and respondent company Mielar/CAA withdrew their requests for review. *See* Letters from petitioners and from Mielar/CAA to the Department, dated July 17, 2007, on file in the Central Records Unit (CRU), room B–099 of the main Department building.

Rescission, in Part, of Administrative 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 in whole or in part. Furthermore, the regulation states the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

Although both petitioners and Mielar/ CAA withdrew their requests for review after the 90-day deadline, the Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted significant time or resources to this review, *e.g.*, the Department has not yet conducted a sales–below cost investigation. As such, based on prior practice, the Department determines it is reasonable to extend the time limit in this case and rescind the review with respect to Mielar/CAA. *See*, *e.g.*, *Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 61018 (October 17, 2006). The Department will issue appropriate assessment instructions for Mielar/CAA directly to U.S. Customs and Border Protection (CBP) within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for Mielar/CAA at the cash deposit rates in effect on the date of entry for entries during the period December 1, 2005, through November 30, 2006.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Tariff Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to conduct

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] Petitioners requested that the Department review Mielar and CAA as separate entities. However, in a previous segment of this proceeding, the Department treated these two companies as a single entity, and no new evidence has been presented in this segment of the proceeding to warrant changing this treatment.

[2] The **Federal Register** notice lists 11 companies; however, as explained in the previous footnote, we are treating Mielar and CAA as a single entity based on our treatment of these two entities in a previous segment of this proceeding.

our sales–below-cost investigation. The time needed to analyze cost of production data and to develop fully the record in this administrative review makes it impracticable to complete the preliminary results of this review within the originally specified time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than December 20, 2007. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(3)(A) and 777(i)(1) of the Tariff Act.

Dated: August 28, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–17462 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar from Germany: Rescission of Antidumping Duty Administrative ReviewE349-E351

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

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Damian Felton, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0182 and (202) 482–0133, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department of Commerce (''the Department'') published an antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Bar from Germany*, 67 FR 10382 (March 7, 2002). On October 10, 2003, the Department published an amended antidumping duty order on stainless steel bar from Germany. *See Notice of Amended Antidumping Duty Orders: Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom*, 68 FR 58660 (October 10, 2003).

On March 2, 2007, the Department published its *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 72 FR 9505 (March 2, 2007). In response to timely requests made by petitioners,[1] Schmiedewerke Groditz GmbH (''SWG''), and BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH and BGH Edelstahl Siegen GmbH (collectively, ''BGH''), the Department initiated an administrative review of the antidumping duty order on stainless steel bar from Germany covering the period March 1, 2006, through February 28, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007).

On July 11, 2007, SWG withdrew its request for an administrative review. BGH requested that the Department extend the deadline for parties to withdraw their request for administrative review on July 26, 2007, and August 2 and 9, 2007. The Department granted these extension requests. On August 16, 2007, BGH and petitioners withdrew their requests for review. As a result of the timely withdrawal of the requests for review by SWG, BGH, and petitioners, we are rescinding this administrative review.

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes 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. Stainless steel bar includes cold–finished stainless steel bars 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), products that have been cut from stainless steel sheet, strip or plate, 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 stainless steel bar subject to this review 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, the written description of the scope of the order is dispositive.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. SWG, BGH, and petitioners withdrew their requests

[1] Carpenter Technology Corporation; Crucible Specialty Metals Division, Crucible Materials Corporation; Electralloy Corporation, a Division of G.O. Carlson, Inc.; North American Stainless; Outokumpu Stainless, Inc.; Universal Stainless and Alloy Products; and Valbruna Slater Steels Corporation (collectively ''petitioners'').

for administrative review. No other party requested a review with respect to SWG, BGH, or any other company. Therefore, the Department is rescinding this administrative review. The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of the publication of this notice. The Department will direct CBP to assess antidumping duties for SWG and BGH at the cash deposit rates in effect on the date of entry for entries during the period March 1, 2006, through February 28, 2007.

Notification to Importers

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 Department's assumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 771(i) and 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 28, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–17440 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke, Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5604, (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On August 6, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period July 1, 2005 through June 30, 2006. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 43600 (August 6, 2007). The current deadline for the final results of this review is December 4, 2007.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Tariff Act allows the Department to extend the time limit for the final results up to 180 days from the date of publication of the preliminary results.

The Department finds that it is not practicable to complete this review within the original time frame due to additional analysis that must be performed with respect to certain adjustments made to U.S. price and the calculation of general and administrative expenses. Furthermore, the Department requires additional time to conduct its cost verification of the questionnaire and supplemental questionnaire responses. Consequently, and in accordance with section 751(a)(3)(A) of the Tariff Act and 19 CFR 351.213(h)(2), the Department is extending the time period for issuing the final results of review by 37 days to 157 days after the publication of the preliminary results. Therefore, the final results will be due no later than January 10, 2008. This notice is published in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: August 28, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–17460 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Electronic Education Fairs for China and India

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The deadline for U.S. accredited colleges and universities to sponsor the U.S. Electronic Education Fairs for China and India by purchasing space on the corresponding Internet landing pages has been extended to September 28, 2007.

DATES: Applications will be accepted from the date of this Notice until 3 pm EDT September 28, 2007. The initiative is scheduled to commence on or around September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Moll, U.S. Department of Commerce. Tel: (248) 508 8404; Keith Roth, U.S. Department of Commerce, Room 1104. Tel: (202) 482 5012; David Long, U.S. Department of Commerce, Room 1104. Tel: (202) 482 3575. U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The U.S. Electronic Education Fairs for China and India are part of a joint initiative between the U.S. Department of Commerce and the U.S. Department of State. The purpose of the initiative is to inform Chinese and Indian students who are interested in studying outside of their home countries about the breadth and depth of the higher education opportunities available in the United States. The initiative utilizes a three-pronged multimedia approach through the Internet, on-ground activities, and television, including two, twenty-three minute TV programs and a series of short, 1–2 minute programs airing on local cable and national satellite TV stations throughout China and India. All programming directs viewers to the corresponding Internet landing page. DVDs distributed through education trade fairs and EducationUSA advising centers throughout China and India will further this message.

Accredited U.S. educational institutions are invited to sponsor the China and India Internet landing pages.

Sponsorships for China OR India will be available in Gold and Silver categories. Institutions that purchase Gold Sponsorship, priced at $8,000, will receive a banner-sized ad with their school's logo and name which will link to their institution's Web site. Institutions that purchase Silver Sponsorship, priced at $3,000, will have their name listed on the site with a link to their institution's Web site. If an institution would like to sponsor and purchase space on both the China and India Internet landing pages, they will receive a 50 percent discount for the second sponsorship, for a total of $12,000 for Gold and $4,500 for Silver.

Applications by qualifying institutions will be selected on a rolling basis, capacity permitting.

Dated: August 29, 2007.

David Long,

Director, Office of Service Industries, International Trade Administration.

[FR Doc. E7–17416 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC35

Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will convene a joint meeting of its Ecosystem Scientific and Statistical Committee (SSC), Standing and Special Reef Fish SSC and Reef Fish Advisory Panel, in St. Petersburg, FL, on September 24 - 28, 2007.

DATES: The Ecosystem SSC meeting will begin at 9 a.m. on Monday, September 24, 2007 and conclude by 3 p.m. on Wednesday, September 26, 2007. The Joint Standing and Special Reef Fish meeting will begin at 9 a.m. on Wednesday, September 26 and conclude by 3 p.m. on Friday, September 28, 2007. The Reef Fish Advisory Panel meeting will begin at 8:30 a.m. on Thursday, September 27, 2007 and conclude by 3 p.m. on Friday, September 28, 2007.

ADDRESSES: The meetings will be held at the Hilton, 333 First Street South, St. Petersburg, FL 33701.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician and Frank S. Kennedy, Fishery Biologist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: Beginning Monday, September 27, 2007, the Ecosystem SSC, along with invited ecosystem modeling experts and other workshop attendees, will continue the process begun in an earlier workshop of evaluating the feasibility of using an ecosystem modeling approach to address fishery management related issues. The group will document data sources used in the Ecopath with Ecosim model of the Gulf of Mexico, and they will identify uncertainties associated with the model. The group will also discuss with Southeast Fisheries Science Center assessment biologists differences between ecosystem modeling and single species stock assessments and, if possible, resolve contradictory results between single species assessments and ecosystem modeling results. The group will also begin developing a proposal for integrating ecosystem modeling activities into the process for evaluating potential management measures.

On Wednesday, September 26, the Ecosystem SSC will meet jointly with the Joint Standing and Special Reef Fish SSC to summarize the ecosystem modeling process, preliminary results, and differences with single species assessment results. The Joint Standing and Special Reef Fish SSC will review and comment on the adequacy of the science, and may provide other comments as it deems appropriate.

Beginning Thursday, September 27, the Joint Standing and Special Reef Fish SSC will meet with the Reef Fish AP to hear presentations on Public Hearing Draft Reef Fish Amendment 30A (greater amberjack/gray tilefish), an options paper for Reef Fish Amendment 30B (red grouper/gag), and a scoping document for Reef Fish Amendment 29 (grouper/tilefish limited access). The Joint Standing and Special Reef Fish Scientific SSC and the Reef Fish Advisory Panel (AP) will then meet separately - each will discuss the Amendment 30A public hearing draft, the Amendment 30B options paper, and the Amendment 29 scoping document, and make recommendations to the Council. Each will also discuss possible adjustments to the deep-water grouper and tilefish total allowable catches (TACs) and, time permitting, will review the proposed goliath grouper cooperative research program. The Reef Fish AP will also elect a new Chair and Vice-chair.

Copies of the agendas and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the SSC's and AP's for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: August 29, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–17405 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC34

Mid-Atlantic 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 Mid-Atlantic Fishery Management Council's (MAFMC) Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 19, 2007, from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton Providence Airport Hotel, 1850 Post Rd., Warwick, RI 02886; telephone: (401) 738–4000.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to consider the appropriateness of making changes, if any, to management measures currently in place for the upcoming (2008–09) fishing year for spiny dogfish. Management measures that will be discussed will include, but will not necessarily be limited to, quotas and daily landings limits.

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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Mid-Atlantic Council Office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: August 28, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–17379 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC33

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 two-day Council meeting on September 18–19, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 18, 2007, beginning at 9 a.m., and Wednesday, September 19, 2007, beginning at 8 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 03260; telephone: (508) 747–4900.

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, September 18, 2007

Following introductions, the Council will conduct elections for 2007–08 officers. Once elections have been completed, members will receive a report from NOAA's Office of Law Enforcement on vessel monitoring system (VMS) network outages and missing position reports from last spring through mid-winter, 2007. Prior to a lunch break there will be an update on the status of Atlantic herring as well as the east coast herring fishery. During the afternoon session the Council will consider and possibly approve a Great South Channel Habitat Area of Particular Concern (HAPC) for inclusion in the draft document for Essential Fish Habitat Omnibus Amendment 2. The Multispecies (Groundfish) Committee will provide an update on the development of Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP). Topics will include sector policy issues, permit history calculations for determining sector catch shares and a review of fishing effort control measures under discussion. The Council will adjourn for the day following a report from its Transboundary Management Guidance Committee. Based on committee advice, the Council intends to approve 2008 Total Allowable Catches for Eastern Georges Bank cod and haddock and Georges Bank yellowtail flounder.

Wednesday, September 19, 2007

The Wednesday session will begin with 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 receive a presentation summarizing the conclusions of the 45th Northeast Regional Stock Assessment Workshop and its Stock Assessment Review Committee concerning the status of sea scallops and Northern shrimp. The Council's Scallop Committee will review progress to date on Framework 19 to the Sea Scallop Fishery Management Plan. Following a lunch break there will be a presentation by NOAA Fisheries staff on Draft Amendment 2 to the Consolidated Highly Migratory Species FMP. The amendment examines different management alternatives available to rebuild sandbar, dusky and porbeagle sharks. There will be an update on the draft management measures and alternatives developed for inclusion in Amendment 3 to the Skate Complex Fishery Management Plan. The Council also will hear a report on the status of the monkfish resource, a presentation based on the results of the recently convened Data Poor Stocks Working Group. The Council meeting will adjourn once it has addressed monkfish management issues, including a discussion of possibly initiating a new framework adjustment to the Monkfish FMP in response to the monkfish assessment and to replace the 2007 emergency rule now in effect.

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 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: August 28, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–17378 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XC32

North 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 North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet, in Seattle, WA.

DATES: The meetings will be held on September 18–20, 2007. The meetings will begin at 9 a.m. on Tuesday, September 18, and continue through Thursday September 20, 2007.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Observer Training Room (GOA Plan Team) and Traynor Room (BS/AI Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda: Principal business is to prepare and review the draft Economic Report, the draft Ecosystems Consideration Chapter, draft stock assessments for some target-categories, and recommend preliminary groundfish catch specifications for 2008/09. Agenda posted on Web site at: *http://www.fakr.noaa.gov/npfmc.*

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 these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: August 28, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–17377 Filed 8–31–07; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 20 September, 2007, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 2001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, August 27, 2007.

Thomas Luebke,

AIA, Secretary.

[FR Doc. 07–4304 Filed 8–31–07; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0100]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 28, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S700.10 DES

SYSTEM NAME:

Travel Input Records (December 1, 2000, 65 FR 75254).

CHANGES:

SYSTEM IDENTIFIER:

Delete ''DES'' from entry.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and at the Defense Logistics Agency Field Activities. Official mailing addresses may be obtained from the System manager below.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Policy Office: Chief, Travel Services Division, Headquarters Defense Logistics Agency, ATTN: DES–BD, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Record holder: Financial Liaison Officers at the DLA Field Activities.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters,

Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.

Request should contain individual's full name, order number and/or Social Security Number (SSN).

DLA employees and military members with direct access to the on-line database may query the database by providing their name and password.

Records older than 15 months are contained within the electronic system, individuals should address a written inquiry to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.

Request should contain individual's full name, order number and/or Social Security Number (SSN).

DLA employees and military members with direct access to the on-line database may query the database by providing their name and password.

For access to electronic records created at HQ DLA within the past 15 months, DLA employees and military members with online access to the database may query the database by providing their name and password.

For access to archived electronic records stored off-line, address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.

Individuals who do not have access to the HQ DLA database should submit written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S700.10

SYSTEM NAME:

Travel Input Records.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6221 and at the Defense Logistics Agency Field Activities. Official mailing addresses may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA military members, civilian employees, and dependents who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS); individuals of other DoD agencies serviced by DLA under an interservice support agreement; and public and private sector individuals traveling under invitational travel orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of name, Social Security Number, home address, security clearance level, order number, travel itinerary, claim data, and financial details of real estate transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 57, 5 U.S.C., Travel, Transportation, and Subsistence; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used in administering the travel program, managing and tracking funds, and accounting for employee status for pay and leave tracking purposes.

Data is also used to determine that expenses relating to the sale or purchase of a residence for a Permanent Change of Station are reasonable and customary for the locality of the transaction.

Statistical data, with all personal identifiers removed, is used to assess trends, manage funds, and forecast future expenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Federal agency or private sector organization employing the traveler for funds control, personnel administration, or program management purposes.

To banking establishments for the purpose of facilitating direct deposit and to confirm billing or expense data.

To Federal, State, and Local government agencies for taxing, audit, or oversight purposes.

To Government and private sector entities to provide for or facilitate transportation, lodging, relocation or related travel services.

The DOD ''Blanket Routine Uses'' also apply to this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are in file folders and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SSN) or order number.

SAFEGUARDS:

Records are maintained in areas that are accessible only to individuals who must service the record in the performance of their official duties. Electronic records are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Paper records are retained for 6 years and then destroyed. Electronic records are retained on line for 15 months and then removed to disk where they are retained for an additional 4 years and 9 months.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Office: Chief, Travel Services Division, Headquarters Defense Logistics Agency, ATTN: DES–BD, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Record holder: Financial Liaison Officers at the DLA Field Activities.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

Request should contain individuals full name, order number and/or Social Security Number (SSN).

DLA employees and military members with direct access to the on-line

database may query the database by providing their name and password.

Records older than 15 months are contained within the electronic system, individuals should address a written inquiry to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

Request should contain individuals full name, order number and/or Social Security Number (SSN).

DLA employees and military members with direct access to the on-line database may query the database by providing their name and password.

For access to electronic records created at HQ DLA within the past 15 months, DLA employees and military members with online access to the database may query the database by providing their name and password.

For access to archived electronic records stored off-line, address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

Individuals who do not have access to the HQ DLA database should submit written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is collected from the individual and the individual's supervisor, from the hiring activity's personnel office, and from travel and expense forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17441 Filed 8–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0099]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 28, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S180.10 CA

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records (September 29, 1997, 62 FR 50910).

CHANGES:

SYSTEM IDENTIFIER:

Delete ''CA'' from entry.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of Legislative Affairs, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2545, Fort Belvoir, VA, 22060–6221, and the DLA Field Activities. Mailing addresses for the DLA Field Activities may be obtained from the System manager.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals, organizations, and other entities who have requested Members of State and Federal Legislative and Executive Branches of Government make inquiries on their behalf.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records contain representative's name, constituent's name, details surrounding the issue being researched and case number. The records may also contain the constituent's Social Security Number, home address, home telephone number, or related personal information provided by the constituent/representative making the inquiry.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''Information is collected to reply to inquiries and to determine the need for and course of action to be taken for resolution. Information may be used by the DLA Director, Vice Director, DLA Senior Leadership and DLA Field Activity Commanders and decision makers as a basis to institute policy or procedural changes.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph and replace with ''Information is furnished to Members/Staff of State and Federal Legislative and Executive Branches of Government who wrote to DLA on behalf of the complainant and who use it to respond to the complainant, or for other related purposes.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Legislative Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the DLA Field Activity Commanders.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should

address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S180.10

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records.

SYSTEM LOCATION:

Office of Legislative Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2545, Fort Belvoir, VA 22060–6221, and the DLA Field Activities. Mailing addresses for the DLA Field Activities may be obtained from the System manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, organizations, and other entities who have requested Members of State and Federal Legislative and Executive Branches of Government make inquiries on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain representative's name, constituent's name, details surrounding the issue being researched and case number. The records may also contain the constituent's Social Security Number, home address, home telephone number, or related personal information provided by the constituent/representative making the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; DOD Directive 5400.4, Provision of Information to Congress; and E.O. 9397 (SSN).

PURPOSE(S):

Information is collected to reply to inquiries and to determine the need for and course of action to be taken for resolution. Information may be used by the DLA Director, Vice Director, DLA Senior Leadership and DLA Field Activity Commanders and decision makers as a basis to institute policy or procedural changes.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is furnished to Members/Staff of State and Federal Legislative and Executive Branches of Government who wrote to DLA on behalf of the complainant and who use it to respond to the complainant, or for other related purposes.

To Federal and local government agencies having cognizance over or authority to act on the issues involved.

The DOD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Retrieved by constituent name, representative name, or case number.

SAFEGUARDS:

Records are maintained in a secure, limited access, or monitored work area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to computer records is further restricted by the use of passwords which are changed periodically. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Records are destroyed after eight years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Legislative Affairs, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the DLA Field Activity Commanders.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, Stop 1644, Fort Belvior, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by constituent, the constituent's representative, and from agency files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17445 Filed 8–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0097]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on October 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Finnegan at (703) 696–3081.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 28, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSMC 08

SYSTEM NAME:

Research and Engineering Prize Competition

SYSTEM LOCATION:

Defense Technical Information Center, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6218.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the general public who request information and apply for the Research and Engineering Prize Competition Program and/or who sponsor applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Tax ID or Social Security Number (SSN), home address, age, proof of citizenship (birth certificate, passport, or current U.S. drivers license), proof of U.S. residency (payroll stub, utility bill, property tax bill, automobile or life insurance bill, voter registration card, deed, mortgage document or statement, or residential lease/rental agreement), telephone number, and e-mail address. If applicant is a team of individuals, team name/organization, the entry title, and the physical description of entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2347a, as amended by the John Warner National Defense Authorization Act for Fiscal Year 2007; Public Law 109–364; DoDD 5134.3, Director of Defense Research and Engineering; DoD Financial Management Regulation, Volume 2, Budget Formulation and Presentation; DoDI 5000.2, Operation of the Defense Acquisition System; DoDI 7000.14–R; and E.O. 9397 (SSN).

PURPOSE(S):

To award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the military missions of the Department of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

DoD Contractor employees may have access to data on a need-to-know basis in performance of specific tasks related to the DDR&E prize competition

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN) and/or Tax ID Number.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to those personnel who require the records to perform their official duties. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Records will be disposed of upon completion or cancellation of projects or earlier, as they serve their purpose, following the competition and then destroyed by shredding the discs and magnetic tape containing the information. Paper copy records will also be destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Prize Competition Manager, Deputy Under Secretary of Defense For Laboratories and Basic Sciences, Defense Research and Engineering, 3030 Defense Pentagon, Washington, DC 20301–3030.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Under Secretary of Defense For Laboratories and Basic Sciences, Director, Defense Research and Engineering, ATTN: Prize Competition Manager, 3030 Defense Pentagon, Washington, DC 20301–3030.

Requests should contain individual's name, Social Security (SSN), and a copy of a government issued identification card with photograph.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system should address written inquiries to Deputy Under Secretary of Defense For Laboratories and Basic Sciences, Director, Defense Research and Engineering, ATTN: Prize Competition Manager, 3030 Defense Pentagon, Washington, DC 20301–3030.

Requests should contain individual's name, Social Security (SSN), and a copy of a government issued identification card with photograph.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the

foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

Rules for accessing records and for contesting contents and appealing initial determinations are contained in 32 C.F.R. part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17448 Filed 8–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary of Defense

[DOD–2007–OS–0095]

Privacy Act of 1974; System of Records

AGENCY: DoD, Defense Intelligence Agency.

ACTION: Notice To Add a System of Records.

SUMMARY: The Defense Intelligence Agency is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on October 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 28, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 07–0002

SYSTEM NAME:

Special Program Information System.

SYSTEM LOCATION:

Defense Intelligence Agency, 200 MacDill Boulevard, Washington DC 20340.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Intelligence Agency personnel, military personnel, and contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals full name, Social Security Number (SSN), employee's type (civilian, military or contractor), organization name, and type of clearance level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12958, Classified National Security Information; DoD Instruction 5205.07, Special Access Program (SAP) Policy; DoD Instruction 5205.11, Management, Administration, and Oversight of DoD Special Access Programs (SAPs); DoD 5200.1–R, Information Security Program; DIA Manual 56–1, 31 Special Program Management; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a database of Defense Intelligence Agency personnel granted access to specific information within the Intelligence Community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the DIA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Physical entry is restricted by the use of guards, locks, and administrative procedures. Automated records are password controlled with system-generated, forced password-change protocols or equipped with ''Smart Card'' technology that requires the insertion of an embedded identification card and entry of a PIN.

RETENTION AND DISPOSAL:

Records are maintained as long as the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Program Development Branch, Office for Security Operations and Anti-Terrorism, Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Privacy Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100. Requests should contain individual's full name, current address, telephone number, and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records, should address written inquiries to the DIA Privacy Official, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

Requests should contain individual's full name, current address, telephone number, and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Instruction 5400.001, Defense Intelligence Agency Privacy Program, and DIA Instruction 5400.002, Freedom of Information Act.

RECORD SOURCE CATEGORIES:

By the individuals, from other databases, or from external sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17451 Filed 8–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007–OS–0096]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence Agency is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on October 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 28, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 07–0003

SYSTEM NAME:

Information Technology Support System.

SYSTEM LOCATION:

Defense Intelligence Analysis Center (DIAC), Bolling AFB, Bldg 6000, Washington, DC 20340–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD intelligence information system (DoDIIS) civilian personnel, military members, and contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's full name, Social Security Number (SSN) and employee type (civilian, military, or contractor)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The National Security Act of 1974, as amended; 5 U.S.C 301, Departmental Regulations; and E.O. 9397 (SSN)

PURPOSE(S):

To manage the Enterprise Information Technology (IT) Operations regarding technological and administrative actions, and human performance in the delivery of IT services (*i.e.*, Password Issuance, Software and Hardware Requirements, Incident Reporting and Change, Release to Configuration Mgt Issues) to the DoD intelligence information system community.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic Storage Media

RETRIEVABILITY:

Individual's last name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Electronic records are destroyed when the agency determines they are no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEM MANAGER(S) TITLE AND ADDRESS:

Chief, Customer Relationship Management Division, Defense Intelligence Agency, Bldg 6000, Bolling AFB, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Privacy Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Request should contain the individual's full name, current address, telephone number, and Social Security Number (SSN).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Privacy Official, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

Request should contain the individual's full name, current address, telephone number, and Social Security Number (SSN).

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager

RECORD SOURCE CATEGORIES:

Individual, DIA Security Files, and Human Resources Data Base.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17450 Filed 8–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0098]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 4, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 27, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S650.30

SYSTEM NAME:

DRMS Surplus Sales Program Records.

SYSTEM LOCATION:

For Local Sales, DAISY National Sales Program (DNSP), and the Bidder Master File (BMF): Defense Reutilization and Marketing Service, ATTN: Chief, Sales Office, DRMS–BBS, 74 Washington Avenue North, Battle Creek, MI 49037–3092.

For the Reutilization Modernization Program (RMP): RMP, DLIS–XP, ATTN: Program Manager, 74 Washington Avenue North, Battle Creek, MI 49037–3092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, businesses, and organizations that have registered to participate in the DoD Surplus Sales Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, business and home addresses and telephone numbers, bidder identification and registration number, bidder status code, Social Security Number (SSN) or Taxpayer ID number, amounts paid, owed or refunded, data on bad checks, bid bond data, and bank guarantee code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; 40 U.S.C. 101 et seq., Federal Property and Administrative Services Act of 1949, as amended; 50 U.S.C. App. 2401 et seq., Export Control; 41 CFR Part 101–45; and E.O. 9397 (SSN).

PURPOSE(S):

Information is collected and maintained for the purpose of registering bidders for DRMS Surplus Sales; creating sales contracts; creating cash collection and refund vouchers; recording payments and property removal details; indebtedness; and other actions associated with the sales transaction.

Data may also be used by DoD law enforcement agencies responsible for auditing and investigating or enforcing criminal, civil, or administrative laws; the Defense Reutilization and Marketing Offices (DRMO) for the purpose of notifying bidders of upcoming surplus sales of potential interest to bidders; the Defense Finance and Accounting Service for the purpose of collecting and depositing payments owed to DRMS; and statistical data with all personal identifiers removed may be used by management for reporting or program management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the General Services Administration for the purpose of adding and flagging bidder's records debarred from doing business with the Federal Government.

To the DRMS commercial sales venture partner(s) for the purpose of registering bidders for their surplus sales, creating sales contracts, creating cash collection and refund vouchers, recording payments and property removal details, indebtedness, and other actions associated with the sales transaction.

The DoD ''Blanket Routine Uses'' also apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (TIN) or Social Security Number (SSN), the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individuals' name, business address, telephone number, Bidder Identification Number or any combination of the above.

SAFEGUARDS:

Access is limited to those DRMS and contractor personnel who use the records to perform official assigned duties. Technical controls are in place to restrict activity of users within the application; data owner verifies a need-to-know for each activity and assigns the candidate user to a group with authorization to perform specific actions.

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Central Processing Units are located in a physically controlled access area requiring either a badge or card swipe for entry. Workstations are controlled

via Common Access Cards (CAC) with application specific generated forced password change protocols if the application itself is not CAC enabled. Passwords are tested for strength at the time of selection. Users are warned of the consequences of improperly accessing restricted databases and data misuse at each login, during staff meetings, and during separate Information Assurance and Privacy Act training. After hours, records are stored in locked file cabinets, locked rooms, or areas controlled by personnel screening. All file cabinets containing information subject to the Privacy Act of 1974 must have DLA Form 1461 affixed to the outside of the storage compartment. This form reads: The material/information contained herein falls within the purview of the Privacy Act of 1974 and will be safeguarded in accordance with the applicable systems of records notice and 32 CFR part 323.

RETENTION AND DISPOSAL:

Records have the following disposition instructions: (a) Sales contracts under $25,000—retain for 3 years after final payment/closure; (b) Sales contracts for $25,000 or more—retain for 6 years after final payment/closure; (c) Hazardous sales contracts of any monetary value—retain for 50 years after final payment/closure.

SYSTEM MANAGER AND ADDRESS(ES):

Chief, Sales Office, Disposition Management, DRMS–BBS (DAISY Local Sales), Defense Reutilization and Marketing Service, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092.

DNSP Data Owner, Property Disposal Specialist (DNSP), Defense Reutilization and Marketing Service, DRMS–BA, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092.

RMP Program Manager, DLIS–XP, 74 Washington Avenue North, Battle Creek, Michigan 49037–3092.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvior, VA 22060–6221.

Request should contain the individual's name, business address and telephone number, and Bidder Identification Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvior, VA 22060–6221.

Request should contain the individual's name, business address and telephone number, and Bidder Identification Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323; or may be obtained from the HQ DLA Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: HQ DLA–GC (FOIA/Privacy), 8725 John J. Kingman Road, STOP 1644, Fort Belvior, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the subject individual. Bidder Identification Numbers are assigned sequentially by DAISY National Sales Program (DNSP). New bidders on Local Sales will receive a sequential number by adding them to the Bidder Master File on the Web, which feeds DNSP. RMP will use the same sequential system assigned Bidder Identification Numbers. Bidder status codes are entered by the DRMS staff and are based on frequency of bid responses and whether or not the bidder has been found ineligible to participate. Debarment data is provided by either the DRMS Office of Counsel or by General Services Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–17447 Filed 8–31–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact; Report/Environmental Impact Statement for the Carryover Storage and San Vicente Dam Raise Project, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability; correction.

SUMMARY: The U.S. Army Corps of Engineers published a Notice of Availability in the **Federal Register** of August 24, 2007, for a Draft Environmental Impact Report/Environmental Impact Statement for the Carryover Storage and San Vicente Dam Raise Project. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Smith, Regulatory Project Manager, U.S. Army Corps of Engineers, Rancho Bernardo Branch Office, at (858) 674–6784; or Ms. Kelley Gage, Senior Water Resources Specialist, San Diego County Water Authority, at (858) 522–6763.

Correction

In the **Federal Register** of August 24, 2007, in FR Doc. E7–16696, on page 48623, in the first column, the correct date for the public hearing to be held at Valley Center High School is October 4, 2007.

On page 48623, in the sixth full paragraph of the first column, the correct end date of the comment period is October 9, 2007.

Dated: August 29, 2007.

David B. Olson,

Federal Register Liaison Officer, U.S. Army Corps of Engineers.

[FR Doc. E7–17439 Filed 8–31–07; 8:45 am]

BILLING CODE 3710–KF–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 November 5, 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: August 28, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Understanding Science Professional Development and the Science Achievement of English Learners.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,516.

Burden Hours: 673.

Abstract: The purpose of this study is to investigate how to prepare middle-school teachers to improve all students' physical science content knowledge, including that of low-performing students and English learners (ELs). Using a cluster-randomized experimental design, the research will test the effectiveness of WestEd's Understanding Science model of professional development, an approach that incorporates science content, analysis of student work and thinking, and critical analysis of issues related to teaching that content to students. The professional development course sessions focus on science concepts both in the context of structured investigations and in narrative cases of teaching practice drawn from actual classroom episodes involving those concepts.

This model will be evaluated by comparing it with a control condition that provides no additional science professional development beyond that already received in each school. The experiment will evaluate the value added for grade 8 teachers in California who take an Understanding Science course in addition to whatever science professional development they ordinarily receive. The ultimate outcome of interest is the impact of the professional development on students' science achievement. To provide a basis for explaining the results, impacts will also be studied on teachers' science content knowledge, and a descriptive study will examine selected aspects of their classroom science instructional practices.

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 3452. 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 I*CDocketMgr@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. E7–17406 Filed 8–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of 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 November 5, 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: August 28, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart E (Verification of Student Aid Application Information).

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,036,371.

Burden Hours: 1,022,384.

Abstract: Verification of Application Information for Title IV Student Financial Assistance Programs. Applicant's and, in some cases, the applicant's parent(s) or spouse must provide documentation to support data

listed on the application for assistance (Free Application for Federal Student Aid—FAFSA).

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 3453. 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. E7–17407 Filed 8–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–590–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

August 22, 2007.

Take notice that on August 17, 2007, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective September 19, 2007.

Texas Eastern states that the purpose of this filing is to modify the Texas Eastern Tariff to (i) update the nomination, scheduling, curtailment and OFO provisions in the General Terms and Conditions, (ii) clarify Customers' rights to segment capacity on the Texas Eastern system, and (iii) make certain minor, non-substantive revisions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–17250 Filed 8–31–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: The Deputy Secretary of Energy has approved the Fiscal Year (FY) 2008 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments, within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2007. These Rates will stay in effect through September 30, 2008, or until superseded by other rates.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: Rate Schedule BCP–F7, Rate Order No. WAPA–120, effective October 1, 2005, through September 30, 2010, allows for an annual recalculation of the rates.[1]

Under Rate Schedule BCP–F7, the existing composite rate, effective on October 1, 2006, was 17.02 mills per kilowatthour (mills/kWh). The base charge was $67,509,136, the energy rate was 8.51 mills/kWh, and the capacity rate was $1.63 per kilowattmonth (kWmonth). The newly calculated rates for BCP electric service, to be effective October 1, 2007, will result in an overall composite rate of 17.64 mills/kWh. The proposed rates were calculated using the FY 2008 Final Ten Year Operating Plan. This resulted in an increase of approximately 3.60 percent when compared with the existing BCP electric service composite rate. The increase is due to a decrease in the projected energy sales. The FY 2008 base charge is decreasing to $66,975,283. The major contributing factor to the decrease is a portion of the post September 11, 2001, security costs which will have been fully collected in the FY 2007 base charge, being deemed non-reimbursable in FY 2007. This results in a larger year end carryover into FY 2008, reducing the revenue requirement. The FY 2008 energy rate of 8.82 mills/kWh is approximately a 3.60 percent increase from the existing energy rate of 8.51 mills/kWh. The increase in the energy rate is due to a decrease in the projected energy sales resulting from continued poor hydrology in the region which results in lower Lake Mead water elevations. The FY 2008 capacity rate remains at the existing $1.63/kWmonth. Although the capacity sales are decreasing due to dropping lake elevations, the base charge is also decreasing resulting in no change to the capacity rate.

The following summarizes the steps taken by Western to ensure involvement

[1] WAPA–120 was approved by the Deputy Secretary of Energy on August 11, 2005 (70 FR 50316) and confirmed and approved by FERC on a final basis on June 22, 2006, in Docket No. EF05–5091–000 (115 FERC ¶ 61,362).

of all Interested Parties in determining the Rates:

1. On February 9, 2007, a letter was mailed from Western's Desert Southwest Customer Service Region to the BCP Contractors and other Interested Parties announcing an informal customer meeting and public information and comment forums.

2. A **Federal Register** notice was published on February 14, 2007 (72 FR 7026), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

3. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 7, 2007, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates and held a question and answer session.

4. At the public information forum held on April 11, 2007, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2008 in greater detail and held a question and answer session.

5. A public comment forum held on May 9, 2007, in Phoenix, Arizona, gave the public an opportunity to comment for the record.

6. Western received two comment letters during the 90-day consultation and comment period. The consultation and comment period ended May 15, 2007. All comments were considered in developing the Rates for FY 2008. Written comments were received from:

Metropolitan Water District of Southern California, California

Irrigation & Electrical Districts Association of Arizona, Arizona

Comments and responses, paraphrased for brevity when not affecting the meaning of the statements, are presented below.

Security Costs

Comment: A BCP Contractor commented that the $10 million cap placed on post September 11, 2001, security costs for 2006 should remain in place since Reclamation is still under a continuing resolution in 2007. Numerous Contractors as well as an Interested Party also commented that these costs should be treated as non-reimbursable or shared with other beneficiaries of the BCP. The BCP Customers believe the Hoover Dam and Lake Mead provide a wide range of important benefits to a number of different classes of beneficiaries such as water users, boaters, fishermen and recreational users, and those users should share in the recovery of the post September 11, 2001, security costs.

Response: It is true that the Bureau is operating under a continuing resolution in 2007. However, the $10 million cap is not binding in 2007 and there is no Congressional direction to limit security cost reimbursement to $10 million as in FY 2006. The Bureau has carefully considered the concerns of power customers over costs as well as the intent that project beneficiaries should pay a share of the security costs just as they do other O&M costs. Based on discretion allowed under Reclamation law, the Bureau has determined that absent clear guidance from the Congress, FY 2007 will be a second transition year in which reimbursement of security costs will be increased from $10 million in FY 2006 to $14.5 million in FY 2007 and will be distributed among project beneficiaries proportionately using methodology similar to that used in FY 2006. Of the $4,111,000 for FY 2007 guard and patrol security costs at Hoover, $954,850 will be non-reimbursable costs.

Post Civil Service Retirement Costs

Comment: A Contractor objects to post Civil Service Retirement System (CSRS) costs being collected through the rates. The Contractor claims these expenses are paid through appropriations and therefore the rates are in excess of the legitimate cost of service. The Contractor requests that the DOE General Counsel re-examine the issue and order that the funds that have been collected be returned to the rate payers. The Contractor questions whether Western is pursuing such action.

Response: In a memorandum dated July 1, 1998, the DOE General Counsel concluded that the Power Marketing Administrations have the authority to collect the full costs of the retirement benefits. Western subsequently began collecting CSRS costs in BCP rates. When Western filed the rate schedule for the BCP as part of Rate Order No. WAPA–94, the Contractor protested to FERC regarding Western's inclusion of these costs. In an Order issued July 31, 2001, FERC ruled that Western's inclusion of the full CSRS costs in its computation of the costs of project operation, and thus in its rates, is neither arbitrary nor capricious nor in violation of law. Docket No. EF00–5092–000 (96 FERC ¶ 61171). The contractors contention is contrary to well settled precedent. FERC has ruled on at least five occasions that CSRS cost are legitimate for inclusion in PMA rates. See 86 FERC ¶ 61,195 (Feb. 26, 1999), rehearing denied, 96 FERC ¶ 61,171 (July 31, 2001), Southeastern Power Administration's (SEPA's) Georgia Alabama rate; 90 FERC ¶ 61,266 (March 17, 2000), rehearing denied, 91 FERC ¶ 61,272, (June 15, 2000), SEPA's Cumberland rates); 93 FERC ¶ 62,100 (Nov. 9, 2000), SEPA's Jim Woodruff rates; 87 FERC ¶ 61,346 (June 22, 1999), Western's Pacific Northwest Pacific Southwest Intertie rates; and 96 FERC ¶ 61,171 (July 31, 2001), Western's Boulder Canyon rates.

Compliance With Northern Electricity Reliability Council (NERC) Standards

Comment: A BCP Contractor requests that Western and Reclamation ensure their compliance with mandatory NERC reliability requirements established by the Energy Policy Act of 2005. They stressed that all costs associated with meeting NERC requirements, as well as associated membership dues such as those paid to the Western Electric Coordinating Council, are appropriately budgeted and allocated to customers. The Contractor further requested that any potential or actual noncompliance penalties that impact BCP and exceed $10,000 be communicated to BCP contractors, and that BOR and Western provide regular updates at the upcoming Engineering and Operating Committee (E&OC) and Technical Review Committee meetings.

Response: Western and the Bureau are both aware of the mandatory NERC reliability standards and the potential cost impact to BCP. Appropriate compliance-related costs have been incorporated into the agency's FY 2008 budget calculations. Both agencies will continue to include all costs associated with properly operating and maintaining the system in the annual budget calculations. Western has developed a team that will review ongoing required compliance activities and has committed to tracking the specific costs related to those activities through separate account numbers in its financial accounting system.

Managing for Excellence Program

Comment: Numerous BCP Contractors suggested Western monitor progress of Reclamation's ''Managing for Excellence Program''. They shared that the program and strategy is good but Western needs to ensure it does not impact or interfere with the current successful partnership shared among the customers, Reclamation, and Western on the Lower Colorado River Projects, specifically, the BCP.

Response: Reclamation reports to the BCP E&OC on an ongoing basis on the

status of its Managing for Excellence Program. Western is confident that monitoring any potential impacts from Reclamation's Program to the BCP would be through the E&OC process. In the update provided at the May 23, 2007, E&OC meeting, Reclamation invited the BCP Contractors to attend a meeting regarding the Managing for Excellence Program in Denver on May 30, 2007. Reclamation encourages the Contractors to participate in future meetings and share any concerns they may have with this Program.

Visitor Center

Comment: BCP Contractors expressed appreciation to Western and Reclamation for exploring additional funding sources for BCP besides customer funding. In addition, they remain concerned with the continuing imbalance between the visitor center costs and the revenues due to reduced visitation since the terrorist attack on September 11, 2001.

Response: Western and the Bureau appreciate the recognition for the efforts contributed by both Federal agencies. Both agencies commit to continual efforts, in partnership with the power customers, to explore new funding opportunities and to develop strategies for pursuing those opportunities for alternative sources of funding for the Visitor Center. To further those efforts, at the May 23, 2007, E&OC meeting, Reclamation presented a draft business plan which includes ideas to increase visitor center revenues. Upon completion of the draft plan, Reclamation will reconvene with an ad hoc committee comprised of Reclamation, Western and the Contractors to review and have input on finalizing and implementing the business plan recommendations.

Other Comments

Comment: A Contractor noted that Western had prevailed in certain litigation before the U.S. Federal Courts of Appeals and thanked Western for the diligence and efforts it took to protect its customers from the lawsuit.

Response: Western appreciates the comment.

Comment: A Contractor commends Reclamation and Western in their determination and recognizes and appreciates their efforts in the various annual rate processes.

Response: Reclamation and Western appreciate the comment.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes operation and maintenance expenses, payments to states, visitor services, the uprating program, replacements, investment repayment, and interest expense. Western's Power Repayment Study (PRS) allocates the projected annual revenue requirement for electric service equally between capacity and energy.

Availability of Information

Information about this base charge and rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western used to develop the FY 2008 BCP base charge and rates, is available for public review in the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona. The information is also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through Western.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (Commission). Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835), and 18 CFR part 300. DOE procedures were followed by Western in developing the rate formula approved by the Commission on June 22, 2006, at 115 FERC ¶ 61362.

The Boulder Canyon Project Implementation Agreement requires Western, prior to October 1 of each rate year, to determine the annual rates for the next fiscal year. The rates for the first rate year, and each fifth rate year thereafter, will become effective provisionally upon approval by the Deputy Secretary of Energy subject to final approval by the Commission. For all other rate years, the rates will become effective on a final basis upon approval by the Deputy Secretary of Energy. This is the second year following Commission approval of BCP–F7 rate. Accordingly, this rate will become final upon approval by the Deputy Secretary.

Western will continue to provide annual rates to the BCP Contractors by October 1 of each year using the same ratesetting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues exist to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, Western prepares a PRS to update actual revenues and expenses and include future estimates of annual revenues and expenses for the BCP, including interest and capitalized costs.

Western's BCP electric service ratesetting formula set forth in Rate Order No. WAPA–70 was approved on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94, extending the existing ratesetting formula beginning on October 1, 2000, and ending September 30, 2005, was approved on July 31, 2001, in Docket No. EF00–5092–000 at 96 FERC ¶ 61171. Rate Order No. WAPA–120, extending the existing ratesetting formula for another five-year period beginning on October 1, 2005, and ending September 30, 2010, was approved on June 22, 2006, in Docket No. EF05–5091–000 at 115 FERC ¶ 61362. The BCP ratesetting formula includes a base charge, an energy rate, and a capacity rate. The ratesetting formula was used to determine the BCP FY 2008 Base Charge and Rates.

Western has proposed a FY 2008 base charge of $66,975,283, an energy rate of 8.82 mills/kWh, and a capacity rate of $1.63/kW month. Consistent with procedures set forth in 10 CFR part 903 and 18 CFR part 300, Western held a consultation and comment period. The notice of the proposed FY 2008 Rates for electric service was published in the **Federal Register** on February 14, 2007 (72 FR 7026).

Under Delegation Order Nos. 00–037.00 and 00–001.00B, and in compliance with 10 CFR part 903 and 18 CFR part 300, I hereby approve the FY 2008 Rates for BCP Electric Service

on a final basis under Rate Schedule BCP–F7, through September 30, 2008.

Dated: August 21, 2007.

Clay Sell,

Deputy Secretary of Energy.

[FR Doc. E7–17404 Filed 8–31–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007–0888; FRL–8463–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for Superfund Site Evaluation and Hazard Ranking System; EPA ICR No. 1488.07, OMB Control No. 2050–0095

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 29, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2007–0888 by one of the following methods:

- *www.regulations.gov:* Our preferred method. Follow the online instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; Superfund Docket; (Mail Code 2822T); 1200 Pennsylvania Avenue NW.; Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; Superfund Docket Office; 1301 Constitution Avenue; EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2007–0888. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Randy Hippen, Office of Superfund Remediation and Technology Innovation, Mail Code 5204P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–603–8829; e-mail address: *hippen.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2007–0888, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are those State agencies, Indian Tribes, and U.S. Territories performing Superfund site evaluation activities.

Title: Superfund Site Evaluation and Hazard Ranking System.

ICR numbers: EPA ICR No. 1488.07, OMB Control No. 2050–0095.

ICR status: This ICR is currently scheduled to expire on February 29, 2008. 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 title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative threats to human health and the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

EPA Regional offices work with States to determine those sites for which the State will conduct the Superfund site evaluation activities and the HRS scoring. The States are reimbursed 100 percent of their costs, except for record maintenance.

Under this ICR, the States will apply the HRS by identifying and classifying those releases or sites that warrant further investigation. The HRS score is crucial since it is the primary mechanism used to determine whether a site is eligible to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including conducting field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 166.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; 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. EPA estimates 60 States, Indian Tribes, and U.S. Territories will likely respond, each averaging 15 actions per year. The total burden for all respondents is estimated at 150,285 hours and approximately $13,580,375 each year (based on historic data on estimated costs per site assessment activity).

The current ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 60.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 15.

Estimated total annual burden hours: 150,285 hours.

Estimated total annual costs: $13,580,375. This includes an estimated burden cost of $13,580,375 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

The current estimate of hours in the total estimated respondent burden reflects hours identified in the ICR currently approved by OMB. EPA expects a decrease in total burden and cost for the renewal ICR due to changes in calculating burden and cost estimates, fewer assessment activities conducted nationally, and a relative shift to less complex assessment activities among respondents.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 28, 2007.

Barnes Johnson,

Acting Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. E7–17412 Filed 8–31–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2007–0031; FRL–8462–6]

Deletion of Existing SORN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a deletion and transfer of an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General, Environmental Protection Agency is giving notice that it proposes to delete and transfer an existing system of records for the IG Operations and Records System (SORN EPA–41). This system was used to support EPA's Personnel Security function when that function was assigned to the EPA Office of Inspector General. The system was used to track the status of EPA Personnel with sensitive clearances and individuals undergoing background

checks for sensitive positions. This module of the EPA OIG's Inspector General Operations and Records (IGOR) System has been removed from the EPA's production server and is no longer available for data input, reports or processing.

The EPA Personnel Security Function has been transferred to EPA's Office of Administration and Resources Management (OARM). Tracking of the Personnel Security Function is currently managed in a sub-system of the Office of Administration Services (OAS), Office of Administration Services Information System (OASIS). The SORN for this IGOR sub-module (EPA–41) has been transferred to the OAS OASIS system.

DATES: Persons wishing to comment on this system of records notice may do so by October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2007–0031, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202–566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2007–0031. 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 for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the 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 for which 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 OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Janet Wilson in the Office of Inspector General at 202–566–2673.

SUPPLEMENTARY INFORMATION:

I. General Information

The IG Operations and Records System of records does not duplicate any existing system of records. Details regarding the deleted system of records are contained in this **Federal Register** Notice. This system was used to keep current information in support of EPA's Personnel Security function which at the time of the issuance of SORN EPA–41 was assigned to the EPA Office of Inspector General. Since that time, EPA's Personnel Security Function has transferred to the Office of Administrative Services.

Dated: August 22, 2007.

Molly O'Neill,

Assistant Administrator and Chief Information Officer.

[FR Doc. E7–17410 Filed 8–31–07; 8:45 am]

BILLING CODE 6560–50–P

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 Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Patterson Bancshares, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Patterson State Bank, both of Patterson, Louisiana.

Board of Governors of the Federal Reserve System, August 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–17390 Filed 8–31–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07–0728]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Electronic Disease Surveillance System (NEDSS)—(OMB Number 0920–0728) REVISION—National Center for Public Health Informatics, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is responsible for the dissemination of nationally notifiable disease information and for monitoring and reporting the impact of epidemic influenza on mortality, Public Health Services Act (42 U.S.C. 241). In April 1984, CDC Epidemiology Program Office (EPO) in cooperation with the Council of State and Territorial Epidemiologists (CSTE) and epidemiologists in six states began a pilot project, the Epidemiologic Surveillance Project (ESP). The ESP is designed to demonstrate the efficiency and effectiveness of the computer transmission of surveillance data between CDC and the state health departments. Each state health department used its existing computerized disease surveillance system to transmit specific data concerning each case of a notifiable disease. CDC technicians developed computer software to automate the transfer of data from the state to CDC.

In June 1985, CSTE passed a resolution supporting ESP as a workable system for electronic transmission of notifiable disease case reports from the states/territories to CDC. As the program was extended beyond the original group of states, EPO began to provide software, training and technical support to state health department staff overseeing the transition from hard-copy to *fully* automated transmission of surveillance data.

By 1989, all 50 states were using this computerized disease surveillance system, which was then renamed the National Electronic Telecommunications System for Surveillance (NETSS) to reflect its national scope. Core surveillance data are transmitted to CDC by the states and territories through NETSS. NETSS has a standard record format for data transmitted and does not require the use of a specific software program. The ability of NETSS to accept records generated by different software programs makes it useful for the efficient integration of surveillance systems nationwide.

Since 1999, the CDC, Epidemiology Program Office (EPO) has worked with CSTE, state and local public health system staff, and other CDC disease prevention and control program staff to identify information and information technology standards to support integrated disease surveillance. That effort is now focused on development of the National Electronic Disease Surveillance System (NEDSS), coordinated by CDC's Deputy Director for Integrated Health Information Systems.

NEDSS will electronically integrate and link together a wide variety of surveillance activities and will facilitate more accurate and timely reporting of disease information to CDC and the state and local health departments. Consistent with recommendations from our state and local surveillance partners as described in the 1995 report, *Integrating Public Health Information and Surveillance Systems*, NEDSS includes data standards, an internet based communications infrastructure built on industry standards. It also includes policy-level agreements on data access, sharing, burden reduction, and protection of confidentiality. To support NEDSS, CDC is supporting the development of an information system, the NEDSS Base System (NBS), which will use NEDSS technical and information standards, (*http://www.cdc.gov/od/hissb/doc/NEDSSBaseSysDescriptioin.pdf*). CDC will receive reports from the 57 respondents (50 state, 2 cities, and 5 territorial health departments) using the NEDSS (NETSS replacement) umbrella of systems, that includes the National Electronic Telecommunications System for Surveillance (NETSS).

There are no costs to the respondents other than their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Weekly Reporting:				
States	50	52	3	7,800
Territories	5	52	90/60	390
Cities	2	52	3	312
Annual Reporting:				
States	50	1	16	800
Territories	5	1	10	50
Cities	2	1	16	32

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Total				9,384

Dated: August 23, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–17401 Filed 8–31–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Financial Institution Data Match.

OMB No. 0970–0196.

Description: Section 466(a)(17) of the Social Security Act (the Act) requires States to establish procedures under which the State Child Support Enforcement IV–D agencies shall enter into agreements with financial institutions doing business in States for the purpose of securing information leading to the enforcement of child support orders. Under 452(l) and 466(a)(17)(A)(i) of the Act, the Secretary may aid State agencies conducting data matches with financial institutions doing business in multiple States by centrally matching through the Federal Parent Locator Service.

Respondents: Financial institutions doing business in two or more States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Data Match Tape	4,465	4	.5	8,930
Election Form	71	1	.5	35.5

Estimated Total Annual Burden Hours: 8.965.5.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: August 28, 2007.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 07–4293 Filed 8–31–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Annual Financial Report for Tribes (ACF–696T).

OMB No.: 0970–0195.

Description: The Child Care and Development Fund (CCDF) annual financial reporting form (ACF–696T) provides a mechanism for Indian Tribes to report expenditures under the CCDF program. The CCDF program provides funds to Tribes, as well as States and Territories, to assist low-income families in obtaining child care so that they can work or attend training/education, and to improve the quality of care. Information collected via the ACF-696T allows the Administration for Children and Families (ACF) to monitor Tribal expenditures and to estimate outlays, and may be used to prepare ACF budget submissions to Congress. Office of Management and Budget (OMB) approval for the existing form expires on April 30, 2008.

Respondents: Indian Tribes and Tribal Organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T	232	1	8	1,856

Estimated Total Annual Burden Hours: 1,856.

In compliance with the requirements of Section 35066(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency , including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 28, 2007.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. 07–4294 Filed 8–31–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Information Comparison with Insurance Data.

OMB No.: New Collection.

Description: The Deficit Reduction Act of 2005 amended Section 452 of the Social Security Act (the Act) to authorize the Secretary of Health and Human Services, through the Federal Parent Locator Service (FPLS), to conduct comparisons of information concerning individuals owing past-due child support with information maintained by insurance companies (or their agents) concerning insurance claims, settlements, awards, and payments. The Federal Office of Child Support Enforcement (OCSE) operates the FPLS in accordance with section 453(a)(1) of the Act. The Federal Case Registry of Child Support Orders (FCR) is maintained in the FPLS in accordance with section 453(h)(1) of the Act.

At the option of an insurer, the comparison may be accomplished by either the following methods: Under the first method, an insurer or the insurer's agent will submit to OCSE information concerning claims, settlements, awards, and payments. OCSE will then compare that information with information pertaining to individuals owing past-due support; under the second method, OCSE will furnish to the insurer or the insurer's agent a file containing information pertaining to individuals owing past-due support. The insurer or the insurer's agent will then compare that information with information pertaining to claims, settlements, awards, and payments. The insurer will furnish the information resulting from the comparison to OCSE.

On a daily basis, OCSE will furnish the results of a comparison to the State agencies responsible for collecting child support from the individuals by transmitting the Insurance Match Response Record. The results of the comparison will be used by the State agencies to collect from the insurance proceeds past-due child support owed by the individuals.

Respondents: Insurance companies or their agents, including the U.S. Department of Labor and State agencies administering workers' compensation programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Insurance Match Agreement	15	1	.5	7.5
Insurnce Match File	15	52	.5	390

Estimated Total Annual Burden Hours: 397.5

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 28, 2007.

Janean Chmbers,

Reports Clearance Officer.

[FR Doc. 07–4295 Filed 8–31–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Request for Nominations

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill two (2) vacancies on the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Authority: 42 U.S.C. 294f, section 756 of the PHS Act, as amended. The Advisory Committee is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2) which sets forth standards for the formation and use of advisory committees.

DATES: The Agency must receive nominations on or before September 30, 2007.

ADDRESS: All nominations are to be submitted to Louis D. Coccodrilli, Designated Federal Official, ACICBL, Bureau of Health Professions (BHPr), HRSA, Parklawn Building, Room 9–05, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adriana Guerra, Public Health Fellow, Division of Medicine and Dentistry, by e-mail at *aguerra@hrsa.gov* or telephone, (301) 443–6194.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACICBL, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), and section 2119 of the Act, 42 U.S.C. 00aa–19, as added by (Pub. L. 99–660) and amended, HRSA is requesting nominations for two (2) voting members.

The ACICBL provides advice and recommendations to the Secretary and to the Congress concerning policy, program development and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 751–756, Title VII, Part D of the Public Health Service Act. The ACICBL prepares an annual report describing the activities conducted during the fiscal year, identifying findings and developing recommendations to enhance Title VII Interdisciplinary, Community-Based Training Grant Programs. The Annual Report is submitted to the Secretary of the U.S. Department of Health and Human Services, and ranking members of the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Energy and Commerce of the House of Representatives. The Department of Health and Human Services is requesting a total of two (2) nominations for voting members of the ACICBL from schools that have administered or are currently administering awards from the following programs: Geriatric Educational and Training Programs—1 nominee and Quentin N. Burdick Program for Rural Interdisciplinary Training—1 nominee.

Interested individuals may nominate multiple qualified professionals for membership to the ACICBL to allow the Secretary to choose from a highly qualified list of potential candidates. Nominees willing to serve as members of the ACICBL should have no appearance of a conflict of interest that would preclude their participation. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit an evaluation of possible sources of conflicts of interest. In addition, a curriculum vitae and a statement of interest will be required of the nominee to support experience working with Title VII Interdisciplinary, Community-Based Training Grant Programs, expertise in the field, and personal desire in participating on a National Advisory Committee. Qualified candidates will be invited to serve a one-, two-, or three-year term. All nominations must be received no later than September 30, 2007.

The legislation governing this Committee requires a fair balance of health professionals who represent the general population with regard to a broad geographic distribution and an evenness of urban and rural areas, along with professionals who are women and minorities. As such, the pool of appropriately qualified nominations should reflect these requirements to the degree possible.

Dated: August 28, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–17388 Filed 8–31–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2008–2010 National Survey on Drug Use and Health: Methodological Field Tests—NEW

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

This will be a request for generic approval for information collection for NSDUH methodological field tests designed to examine the feasibility, quality, and efficiency of new procedures of revisions to the existing survey protocol. These field tests will examine ways to increase data quality, lower operating costs, and gain a better understanding of various sources of

nonsampling error. If these tests provide successful results, current procedures may be revised and incorporated into the main study (e.g., questionnaire changes). Particular attention will be given to minimizing the impact of design changes so that survey data continue to remain comparable over time.

Field test activities are expected to include improving response rates among persons residing in controlled access communities (locked apartment buildings, gated communities, college dormitories, etc.), and conducting a nonresponse follow-up study. Cognitive laboratory testing will be conducted prior to the implementation of significant questionnaire modifications. These questionnaire modifications will also be pre-tested and the feasibility of text-to-speech software determined. To understand the effectiveness of current monetary incentive, a new incentive study will be conducted with varying incentive amounts. The relationship between incentives and veracity of reporting will also be examined. Tests will also be designed to determine the feasibility of alternative sample designs and modes of data collection. Lastly, a customer satisfaction survey of NSDUH data users will be conducted to improve the utility of the NSDUH data. Some of the above studies may be combined to introduce survey efficiencies.

The average annual burden associated with these activities over a three-year period is summarized below:

Activity	Number of responses	Responses per respondent	Average burden per response (hr.)	Total burden (hrs.)
a. Improving participation among controlled access and other hard-to-reach populations	417	1	1.0	417
b. Nonresponse follow-up	2000	1	1.0	2000
c. Incentive Study	2000	1	1.0	2000
d. Validity study (including testing methods for biological data specimens)	2500	1	1.0	2500
e. Cognitive laboratory testing	90	1	1.0	90
f. Annual questionnaire pre-test	670	1	1.0	670
g. Field testing (alternative questions, data collection protocol, contact materials)	1000	1	1.0	1000
h. Text-to-speech software for voices in computer-assisted interviewing	100	1	1.0	100
i. Testing alternative sample designs (including alternative sampling frames)	1000	1	1.0	1000
j. Alternative modes of data collection (e.g., T–ACASI for Nonresponse follow-up)	100	1	1.0	100
k. Customer satisfaction survey of NSDUH data users	100	1	.25	25
Household screening for a-d, f-g, i-j	12,471	1	0.083	1035
Screening Verification for a-d, f-g, i-j	997	1	0.067	68
Interview Verification for a-d, f-g, i-j	1497	1	0.067	100
Total	24,942	—	—	11,105

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: August 23, 2007.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E7–17386 Filed 8–31–07; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2007–0065]

Data Privacy and Integrity Advisory Committee

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Data Privacy and Integrity Advisory Committee will meet on September 19, 2007 in Arlington, VA. This meeting will be open to the public.

DATES: The Data Privacy and Integrity Advisory Committee will meet on Wednesday, September 19, 2007 from 9 a.m. to 12:15 p.m. and 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held in the Gallery I and II Rooms of the Hilton Arlington and Towers, 950 North Stafford Street, Arlington, VA 22203. Send written material, comments, and requests to make oral presentations to Ken Hunt, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528. Written materials, comments, and requests to make oral presentations at the meeting should reach the contact person listed by September 10, 2007. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the persons listed under **FOR FURTHER INFORMATION CONTACT**, below, by September 10, 2007. Persons wishing to make comments or who are unable to attend or speak at the meeting may submit comments at any time. All submissions received must include the docket number: DHS–2007–0065 and may be submitted by any *one* of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments on the Web site.
- *E-mail: PrivacyCommittee@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* (866) 466–5370.
- *Mail:* Mr. Ken Hunt, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the docket number: DHS–2007–0065. Comments received will also be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or

comments received by the DHS Data Privacy and Integrity Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Hugo Teufel III, Chief Privacy Officer, or Ken Hunt, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780 or by fax (703) 235–0442, or by e-mail *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

During the meeting, the DHS Chief Privacy Officer will provide an update on the activities of the DHS Privacy Office. In the morning and afternoon sessions, invited speakers will discuss privacy protections and concerns within the Homeland Security State, Local, and Regional Fusion Center Initiative. The Committee will also hear a presentation on the US-VISIT program privacy compliance. The Subcommittees will update the Committee on the work currently being conducted. A tentative agenda has been posted on the Privacy Advisory Committee Web site at *http://www.dhs.gov/privacy.*

At the discretion of the Chair, members of the public may make brief (i.e., no more than three minutes) oral presentations from 4 p.m.–4:30 p.m. If you would like to make an oral presentation at the meeting, please register in advance or sign up on the day of the meeting. If you would like a copy of your material(s) distributed to each member of the committee in advance, please submit 22 copies to Ken Hunt by September 10, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ken Hunt as soon as possible.

Dated: August 24, 2007.

John W. Kropf,

Deputy Chief Privacy Officer.

[FR Doc. E7–17402 Filed 8–31–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–29046]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet as required to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: The working groups will meet on Tuesday, September 18, from 9 a.m. to 5 p.m. TSAC will meet on, Wednesday, September 19, from 8 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material for and requests to make oral presentations at the meetings should reach the Coast Guard on or before September 10, 2007. Requests to have a copy of your material distributed to each member of the Committee or working groups prior to the meetings should reach the Coast Guard electronically on or before September 10, 2007.

ADDRESSES: TSAC will meet at the Sleep Inn and Suites; 10127 Washington Blvd.; Laurel, MD 20723. Please phone 301–604–6200 for guest room reservations before September 16, 2007 and mention that you are part of the Coast Guard meeting. Their Web site for maps/directions is *http://www.choicehotels.com/ires/en-US/html/HotelInfo?hotel=MD189&sid=s2Bwg.toJmdg8lxg.3.* Send written material and requests to make oral presentations to the Committee's Assistant Executive Director in the **FOR FURTHER INFORMATION CONTACT** section below. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2007–29046.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Assistant Executive Director, TSAC; U.S. Coast Guard Headquarters, CG–3PSO–1, Room 1210; 2100 Second Street, SW., Washington, DC 20593–0001. Telephone (202) 372–1401, fax (202) 372–1926, or e-mail at: *Gerald.P.Miante@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act [5 U.S.C. App. (Pub. L. 92–463)]. TSAC is chartered under that Act. It provides advice and makes recommendations to the Secretary on issues regarding shallow-draft inland and coastal waterway navigation and towing safety.

Agenda of Committee Meeting

The agenda tentatively includes the following items:

(1) Update of the Towing Vessel Inspection Working Group;

(2) Update on the Legislative Change Proposal (LCP) and the Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials (Medical NVIC).

(3) Report from the Working Group on Lessons Learned from the Review of the AV KASTNER/BUCHANAN 14/SWIFT Collision and the MV WALLY ROLLER Incident;

(4) Update on the Merchant Mariner Credential (MMC) Rulemaking;

(5) Update on the STCW Rulemaking;

(6) Update on Training and Service Requirements for Merchant Marine Officers;

(7) Update on Commercial/Recreational Boating Interface;

(8) Update on the National Maritime Center (NMC) Restructuring/Centralization;

(9) Report on the M/V MARGARET ANN Incident; and

(10) Update on the Transportation Worker Identification Credential (TWIC).

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. Members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant Executive Director no later than September 10, 2007. Written material for distribution at a meeting should reach the Coast Guard no later than September 10, 2007. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit this material electronically to the e-mail address in **FOR FURTHER INFORMATION CONTACT** no later than September 10, 2007. Also, at the Chair's discretion, members of the public may present comment at the end of the Public Meeting. Please understand that the Committee's schedule may be quite demanding and time for public comment may be limited.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: August 20, 2007.

J.G. Lantz,

Director of National and International Standards, Assistant Commandant for Prevention.

[FR Doc. 07–4319 Filed 8–30–07; 12:12 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; 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 revised information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

SUPPLEMENTARY INFORMATION: With the passage of the Flood Disaster Protection Act of 1973, an owner of a structure, with a federally backed mortgage, located in the 1-percent annual chance floodplain, was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort, FEMA mapped the 1-percent annual chance floodplain in communities. However, the 1-percent annual chance floodplain may change due to changes within the floodplain, or may be more accurately depicted through the use of more up-to-date methods and data. FEMA will issue a Letter of Map Revision to officially revise the 1-percent annual chance floodplain.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0016.

Form Numbers: FEMA forms 81–89, 81–89A, 81–89B, 81–89C, 81–89D, 81–89E.

Abstract: The certification forms (referred to as MT–2 series forms) are designed to assist requesters in gathering information that FEMA needs to revise a National Flood Insurance Program map. FEMA Form 81–89, Overview and Concurrence Form, describes the location of the request, what is being requested, and what data are required to support the request. In addition, NFIP regulations 44 CFR 65.5(a)(4) require that a community official certify that the request complies with minimum floodplain management criteria specified in 44 CFR 60.3. This form ensures that this requirement is fulfilled prior to the submittal of the request to FEMA. FEMA Form 81–89A, Riverine Hydrology and Hydraulics Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of hydrologic and hydraulic analyses performed in support of a revision request. It also addresses more common regulatory issues; FEMA Form 81–89B, Riverine Structures Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of revision requests involving new or modified structures in riverine flood hazard areas; FEMA Form 81–89C, Coastal Analysis Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of coastal analyses performed in support of a revision request. It also addresses more common regulatory issues; FEMA Form 81–89D, Coastal Structures Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of revision requests involving new or modified structures in coastal flood hazard areas; FEMA Form 81–89E, Alluvial Fan Flooding Form, allows FEMA to efficiently review assumptions made, parameters used, and the results of alluvial fan flooding analyses performed in support of a revision request.

Affected Public: Business and other for profit organization such as Land Surveyors or Engineering firms will be primarily be affected by the collection. In addition, home owners, local or state officials may also be affected in some instances.

Estimated Total Annual Burden Hours: 24,360.

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 (D) = (A×B)	Total annual burden hours (E) = (C×D)
Form 81–89, Overview and Concurrence Form	1,680	Annual (1)	1.0	1,680	1,680
Form 81–89A, Riverine Hydrology & Hydraulics Form	1,680	Annual (1)	3.5	1,680	5,880
Form 81–89B, Riverine Structures Form	1,680	Annual (1)	7.0	1,680	11,760
Form 81–89C, Coastal Analysis Form	1,680	Annual (1)	1.0	1,680	1,680
Form 81–89D, Coastal Structures Form	1,680	Annual (1)	1.0	1,680	1,680
Form 81–89E, Alluvial Fan Flooding Form	1,680	Annual (1)	1.0	1,680	1,680
Total	*1,680		14.5	10,080	24,360

*The number of respondents equals total number of collection package received. Estimated number of collection package received in a given year is 1,680.

Estimated Cost: Cost to respondent is estimated to be approximately $29.4 million annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: August 28, 2007.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–17485 Filed 8–31–07; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to amend or revise National Flood Insurance Program (NFIP) Maps to remove certain property from the 1-percent annual chance floodplain.

SUPPLEMENTARY INFORMATION: With the passage of the Flood Disaster Protection Act of 1973, an owner of a structure, with a federally backed mortgage, located in the 1-percent annual chance floodplain, was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort, FEMA mapped the 1-percent annual chance floodplain in communities. However, due to scale limitations, individual structures that may be above the base flood cannot always be shown as being out of the 1-percent annual chance floodplain. FEMA will issue a Letter of Map Amendment (LOMA) or a Letter of Map Revision—Based on Fill (LOMR–F) to waive the Federal requirement for flood insurance when data is submitted to show that the property or structure is ''reasonably safe from flooding'' and at or above the elevation of the base flood. Requestors can check on the status of their Letter of Map Amendment (LOMA), Letter of Map Revision Based on Fill (LOMR–F), Conditional Letter of Map Amendment (CLOMA), and Conditional Letter of Map Revision Based on Fill (CLOMR–F) request by visiting FEMA's Mapping Information Platform Web site at *https://hazards.fema.gov.*

Collection of Information

Title: Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR–Fs.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0015.

Form Numbers: FEMA Forms 81–87, 81–87A, 81–87B.

Abstract: The certification forms (referred to as MT–1 series forms) are designed to assist requesters in gathering information that the FEMA needs to determine whether a certain property is likely to be flooded during a flood event that has a one-percent annual chance of being equaled or exceeded in any given year (base flood). FEMA Form 81–87, Property Information, describes the location of the property, what is being requested, and what data are required to support the request. FEMA Form 81–87A, Elevation Information, indicates what the Base (one-percent annual chance) Flood Elevation (BFE) for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. This information is required in order for FEMA to determine if the property that the requester would like removed from the Special Flood Hazard Area (SFHA) is at or above the BFE. FEMA Form 81–87B, Community Acknowledgment, requires that a community official certify that the request complies with minimum floodplain management criteria specified in 44 CFR 60.3, as per NFIP regulations 44 CFR 65.5(a)(4).

Affected Public: Individuals or Households, Business or other for-profit organizations, and state and local or tribal government.

Estimated Total Annual Burden Hours: 58,150.

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 (D) = (A×B)	Total annual burden hours (E) = (C×D)
Form 81–87, Property Information Form (Homeowners/Representatives of Homeowner).	18,272	Annual (1) ...	1.63	18,272	29,783
Form 81–87A, Elevation Form (Surveyors/Engineers)	18,272	Annual (1) ...	1.25	18,272	22,840
Form 81–87B, Community Acknowledgment Form (Community Officials).	3,389	Annual (1) ...	1.38	3,389	4,677
On-line LOMA/LOMR–F Tutorial (Homeowners)	1,700	Annual (1) ...	0.5	1,700	850
Total	41,633	.....	4.76	41,633	58,150

Estimated Cost: Cost to respondents is estimated to be $1,258,199 annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Cecelia Lynch, FEMA, Federal Insurance and Mitigation Administration at (202) 646–7045 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: August 27, 2007.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–17486 Filed 8–31–07; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1717–DR]

Minnesota; 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 Minnesota (FEMA–1717–DR), dated August 23, 2007, and related determinations.

EFFECTIVE DATE: August 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 23, 2007.

Olmsted, Steele, and Wabasha Counties for Individual Assistance and Public Assistance Category B (emergency protective measures), including direct Federal 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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17480 Filed 8–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1717–DR]

Minnesota; 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 Minnesota (FEMA–1717–DR), dated August 23, 2007, and related determinations.

EFFECTIVE DATE: August 23, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 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 Minnesota resulting from severe storms and flooding beginning on August 18, 2007, and continuing, 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 Minnesota.

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 Individual Assistance in the designated areas; assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program in the designated areas; Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you 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).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, 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 Minnesota to have been affected adversely by this declared major disaster:

Fillmore, Houston, and Winona Counties for Individual Assistance and Public Assistance Category B (emergency protective measures), including direct Federal assistance.

All counties within the State of Minnesota 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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17481 Filed 8–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1715–DR]

Vermont; 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 Vermont (FEMA–1715–DR), dated August 3, 2007, and related determinations.

EFFECTIVE DATE: August 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 3, 2007.

Caledonia and Orleans Counties 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,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–17484 Filed 8–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–FA–12]

Announcement of Funding Awards for Fiscal Year 2007; Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 2007 Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC) Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to assist Alaska Native/Native Hawaiian institutions of higher education to expand their role and effectiveness in addressing communities in their localities, consistent with the purpose of Title I of the Housing and Community Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Alaska Native/Native Hawaiian Institutions Assisting Communities Program was approved by Congress under the Revised Continuing Appropriations Resolution, 2007 and is administered by the Office of University Partnerships under the Office of the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The AN/NHIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog Federal Domestic Assistance number for this program is 14.515.

On March 13, 2007 (721 FR 11487), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $2.9 million appropriated in FY07, plus $810,691 in previously unobligated funds. Each eligible campus was permitted to apply individually, for $800,000 the maximum amount that can be awarded for a period of 36 months.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2007 Alaska Native/Native Hawaiian Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Region X

1. University of Alaska Fairbanks/Chukchi Campus, Mr. Lincoln Saito, University of Alaska Fairbanks/Chukchi Campus, 604 3rd Street, Kotzebue, AK 99752–0297. Grant: $799,955.

2. University of Alaska Fairbanks/Bristol Bay Campus, Dr. Deborah McLean, University of Alaska Fairbanks/Bristol Bay Campus, P.O. Box 757880, Fairbanks, AK 99775–7880. Grant: $799,500.

3. Ilisagvik College, Ms. Marilyn Venable, Ilisagvik College, P.O. Box 749, Barrow, AK 99723. Grant: $799,989.

Region IX

4. University of Hawaii/Leeward Community College, Mr. Mike Pecsok, University of Hawaii/Leeward Community College, 2530 Dole Street, Sakamaki D–200, Honolulu, HI, 96822. Grant: $581,325.

5. University of Hawaii/Kapiolani Community College, Dr. Robert Franco, University of Hawaii/Kapiolani Community College, 2530 Dole Street, Sakamaki D–200, Honolulu, HI, 96822. Grant: $799,922.

Dated: August 28, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E7–17380 Filed 8–31–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–FA–11]

Announcement of Funding Awards for Fiscal Year 2007 Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for

Fiscal Year (FY) 2007 Tribal Colleges and Universities Program (TCUP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable Tribal Colleges and Universities (TCU) to build, expand, renovate, and equip their own facilities, and expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8106, Washington, DC 20410, telephone (202) 402–3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on (800) 877–8339 or (202) 708–1455 (Telephone number, other than ''800'' TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was approved by Congress under the Revised Continuing Appropriations Resolution, 2007 and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assist tribal colleges and universities to build, expand, renovate, and equip their own facilities, and expand the role of the TCUs into the community through the provision of needed services such as health programs, job training, and economic development activities.

The Catalog Federal Domestic Assistance number for this program is 14.519.

On March 13, 2007 (72 FR 11497), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $2.57 million in Fiscal Year (FY) 2007, plus an additional $217,190 that was carried over from the last year's competition making a total of $2,791,190 available for funding the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded five applications.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

List of Awardees for Grant Assistance Under the FY 2007 Tribal Colleges and Universities Program Funding Competition, By Institution, Address, and Grant Amount

Region VI

1. Institute of American Indian Arts, Mrs. Laurie Logan Brayshaw, Institute of American Indian Arts, 83 Avan Nu Po Road, Santa Fe, NM 87508. Grant: $600,000.

Region VIII

2. Sitting Bull College, Ms. Koreen Ressler, Sitting Bull College, 1341 92nd Street, Fort Yates, ND 58538. Grant: $600,000.

3. Cankdeska Cikana Community College, Mr. Harold McCowan, Candeska Cikana Community College, P.O. Box 269, Fort Totten, ND 58335. Grant: $599,309.

4. Fort Berthold Community College, Mr. Keith Smith, Fort Berthold Community College, 220 8th Avenue, North, P.O. Box, 490, New Town, ND 58763. Grant: $391,881.

5. Oglala Lakota College, Ms. Arlene Quist, Oglala Lakota College, 490 Piya Wiconi Road, Kyle, SD 57752. Grant: $600,000.

Dated: August 28, 2007.

Darlene F. Williams,

Assistant Secretary for Policy, Development and Research.

[FR Doc. E7–17381 Filed 8–31–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
137431	Lemur Conservation Foundation	72 FR 17929; April 10, 2007	July 13, 2007.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
153378	Donill J. Kenney	72 FR 31090; June 5, 2007	July 19, 2007.
151301	Joey A. Dimucci	72 FR 31847; June 8, 2007	July 19, 2007.
153560	Milton Schultz, Jr.	72 FR 33242; June 15, 2007	July 23, 2007.
151877	Mark E. Buchanan	72 FR 31847; June 8, 2007	July 24, 2007.
154914	John A. Lally	72 FR 33242; June 15, 2007	July 25, 2007.
154892	Lloyd Douglas	72 FR 33242; June 15, 2007	July 26, 2007.
153569	Jimmie R. Wells	72 FR 33242; June 15, 2007	July 24, 2007.

Dated: July 27, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–17421 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by October 4, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Minnesota Zoo, Apple Valley, MN, PRT–161780

The applicant requests a permit to import one female live captive-born amur leopard (*Panthera pardus orientalis*) from the Parc Zoologique Et Botanique, France for the purpose of enhancement of the survival of the species.

Applicant: David A. Heather, West Bend, WI, PRT–162400

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Kevin A. Dettler, Doland, SD, PRT–162241

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: August 17, 2007.

Jorge Villavicencio,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–17434 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 4, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Edward J. Dubovi, Animal Health Diagnostic Center, Cornell University, Ithaca, NY, PRT–159514 (AS)

The applicant requests a permit to import biological samples from jaguar (*Panthera onca*) collected in the wild in Guatemala, for the purpose of scientific research. This notification covers

activities to be conducted by the applicant over a five-year period.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: James C. Lindsay, Jr., Kosciusko, MS, PRT–153571

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: John A. McCall, Jr., Grapeland, TX, PRT–155646

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Lynn H. Stinson, Atwater, CA, PRT–158124

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: August 3, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–17420 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 4, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: New York University College of Dentistry, New York, NY, PRT–158094

The applicant requests a permit to import biological samples of skeletal parts salvaged from both captive and wild populations of black rhinoceros (*Diceros bicornis*), mountain gorilla (*Gorilla gorilla beringei*), chimpanzee (*Pan troglodytes*), leopard (*Panthera pardus*), and L'Hoest's monkey (*Cercopithecus lhoesti*) in Rwanda for the purpose of scientific research into stress management in wildlife populations.

Applicant: Los Angeles Zoo, Los Angeles, CA, PRT–158940

The applicant requests a permit to import one male and one female captive born giant otter (*Pteronura brasiliensis*) for the purpose of enhancement of the survival of the species.

Applicant: The Institute for Greatly Endangered and Rare Species (T.I.G.E.R.S.), Myrtle Beach, SC, PRT–152116

The applicant requests a permit to export two male and four female captive-born generic tigers (*Panthera tigris*) to the Samutprakarn Crocodile Farm and Zoo, Samutprakarn, Thailand, for the purpose of enhancement of the species through conservation education.

Dated: July 27, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–17429 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit Number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
143422	James R. Gabrick	72 FR 12182; March 15, 2007	July 19, 2007.
150523	Patrick P. Decastro	72 FR 25328; May 4, 2007	July 10, 2007.
151724	Larry E. Ensign	72 FR 31847; June 8, 2007	July 25, 2007.
151828	John H. MacPeak	72 FR 31847; June 8, 2007	July 26, 2007.
152218	Gregory S. Oliver	72 FR 28517; May 21, 2007	July 19, 2007.

Permit Number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
152244	Leslie J. Naisbitt	72 FR 31090; June 5, 2007	July 19, 2007.
152720	James H. Bandy	72 FR 31847; June 8, 2007	July 19, 2007.
152774	Eric K. Schnelle	72 FR 33242; June 15, 2007	July 26, 2007.
152930	James C. Wondzell	72 FR 31847; June 8, 2007	July 19, 2007.
153379	Meyers R. Delaney	72 FR 31090; June 5, 2007	July 26, 2007.
153451	Clifford C. Neuse	72 FR 31090; June 5, 2007	July 19, 2007.
154199	James W. Dusa	72 FR 31601; June 7, 2007	July 24, 2007.
154206	Victor J. Mueller	72 FR 31601; June 7, 2007	July 25, 2007.
155060	Paul V. Facchina, Sr.	72 FR 33242; June 15, 2007	July 25, 2007.

Dated: August 3, 2007.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–17419 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*, the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
150804	David M. Lally	72 FR 29542; May 29, 2007	August 8, 2007.
152072	Wayne F. Farnsworth, Jr.	72 FR 31090; June 5, 2007	July 31, 2007.
152907	Matt Ward	72 FR 31090; June 5, 2007	August 1, 2007.
153363	Don R. Miller	72 FR 31090; June 5, 2007	August 8, 2007.
153380	Mark A.Watson	72 FR 31090; June 5, 2007	August 7, 2007.
154610	Jim A. Schilling	72 FR 31601; June 7, 2007	August 1, 2007.
154811	James L. Brogan	72 FR 33242; June 15, 2007	August 1, 2007.
154900	Edward P. Greer	72 FR 33242; June 15, 2007	August 9, 2007.
154908	Kirk E. Winward	72 FR 33242; June 15, 2007	August 2, 2007.
155077	Eric Rau	72 FR 33242; June 15, 2007	August 3, 2007.

Dated: August 17, 2007.

Jorge Villavicencio,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–17437 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–07–1610–PH–24–1A]

Notice of Resource Advisory Committee Meeting

AGENCY: Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) 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's (BLM) Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: The GSENMAC will meet September 19 and 20, 2007; with an optional field trip on September 21.

ADDRESSES: The GSENMAC will meet at the GSENM Visitor Center, Conference Room, 745 HWY 89 East, Kanab, Utah.

FOR FURTHER INFORMATION: Contact Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4310, or e-mail *larry_crutchfield@blm.gov*.

SUPPLEMENTARY INFORMATION: The meeting on September 19 will begin at 9:30 a.m. and conclude at 6 p.m.; the meeting on September 20 will begin at 8 a.m. and conclude at 12 p.m. An orientation site visit to the Buckskin Mountain vegetation restoration and fuels reduction project is scheduled from 12 p.m. to 5 p.m. on September 21.

The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was first appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA) and was subsequently reappointed June 2, 2006. As specified in the Monument Management Plan, the GSENMAC will have several primary tasks (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives. (2) Review appropriate research proposals and make

recommendations on project necessity and validity. (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above. (4) Could be consulted on issues such as protocols for specific projects.

Topics to be presented and discussed by the GSENMAC include: Elections for GSENMAC Chair and Vice Chair; Management updates to the GSENMAC; Sub-committee reports (Rangeland Health, Science, and Marketing/Partnerships/Revenue); vegetation restoration and fuels reduction on Buckskin Mountain.

Members of the public are welcome to address the council from 5 p.m. to 6 p.m., local time on September 19, 2007, in Kanab, Utah, at the GSENM Visitor Center. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Larry Crutchfield, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings, including the site orientation, are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: August 26, 2007.

Larry E Crutchfield,

Acting Monument Manager, Grand Staircase-Escalante National Monument.

[FR Doc. E7–17292 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–410–1610–DR–006D]

Notice of Availability of the Record of Decision for the Coeur d'Alene Resource Management Plan (RMP)/ Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM Policy, the BLM announces the availability of the RMP/ROD for the Coeur d'Alene Field Office located in Idaho. The Idaho State Director signed the ROD on June 29, 2007, and it is effective as of that date.

ADDRESSES: Copies of the Coeur d'Alene ROD/RMP are available upon request from the Coeur d'Alene Field Office, Bureau of Land Management, ATTN: RMP, 3815 Schreiber Way, Coeur d'Alene, ID 83815, or via the internet at *http://www.blm.gov/rmp/id/cda/.*

FOR FURTHER INFORMATION CONTACT: Scott Pavey, Spokane District Office, 1103 North Fancher, Spokane Valley, Washington 99212, (208) 769–5059, or e-mail *scott_pavey@blm.gov.*

SUPPLEMENTARY INFORMATION: The Coeur d'Alene RMP was developed with broad public participation through a three year collaborative planning process. This RMP addresses management on approximately 97,900 acres of public land in the planning area. The Coeur d'Alene RMP is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for forest, upland, and riparian vegetation; wildlife habitats; cultural and visual resources; and recreation. The approved Coeur d'Alene RMP is essentially the same as Alternative D in the Proposed RMP/Final Environmental Impact Statement (PRMP/FEIS), published in October 2006.

The BLM received two protests to the PRMP/FEIS which the Director of BLM resolved without requiring significant changes to proposed decisions in the PRMP/FEIS. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the PRMP/FEIS. Thus, as a result of the lack of substantive comments in the protest and consistency review stages, only minor editorial modifications were made in preparing the ROD/RMP. These modifications corrected errors that were noted during review of the PRMP/FEIS and provide further clarification for some of the decisions.

The RMP includes decisions identifying designated routes of travel for motorized vehicles, which are implementation level decisions and are therefore appealable under 43 CFR Part 4. These decisions (route identifications) are displayed on travel management maps in the ROD/RMP. Any party adversely affected by these route identifications may appeal within 30 days of publication of this Notice of Availability, pursuant to 43 CFR part 4, subpart E. The appeal should identify the specific route(s) by township, range, and section on which the decision is being appealed. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements. The appeal must be filed with the Field Manager of the Coeur d'Alene Field Office at the above listed address.

Before including your address, phone number, e-mail address, or other personal identifying information in your appeal, you should be aware that your entire appeal—including your personal identifying information—may be made publicly available at any time. While you can ask us in your appeal to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Thomas H. Dyer,

Bureau of Land Management, Idaho State Director.

[FR Doc. E7–17417 Filed 8–31–07; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–417 and 731–TA–953, 954, 957–959, 961, and 962 (Review)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on carbon and certain alloy steel wire rod (''wire rod'') from Brazil and antidumping duty orders on wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on wire rod from Brazil and the antidumping duty orders on wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to

[1] No response to this request for information is required if a currently valid Office of Management

be assured of consideration, the deadline for responses is October 24, 2007. Comments on the adequacy of responses may be filed with the Commission by November 20, 2007. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 4, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov)*. The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 22, 2002, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of wire rod from Brazil (67 FR 64871).[2] On October 29, 2002, Commerce issued antidumping duty orders on imports of wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine (67 FR 65944–65947). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found a single *Domestic Like Product* consisting of: (1) All carbon and certain alloy steel wire rod included within Commerce's scope, and (2) the grade 1080 tire bead and grade 1080 tire cord quality wire rod that had been excluded from Commerce's scope. One Commissioner defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found a single Domestic Industry consisting of all U.S. producers of the *Domestic Like Product* which, as stated above, consists of all wire rod corresponding to Commerce's scope as well as the certain grade 1080 tire cord and grade 1080 tire bead wire rod products that Commerce had excluded from the scope. One Commissioner defined the *Domestic Industry* differently.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* concerning the countervailing duty order on imports of wire rod from Brazil is October 22, 2002, and the *Order Date* concerning the antidumping duty orders on imports of wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine is October 29, 2002.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter

and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–173, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

[2] A countervailing duty order on imports of wire rod from Canada was also issued by Commerce in the same notice; however, that order was subsequently revoked by Commerce (69 FR 3330, January 23, 2004).

will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 24, 2007. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 20, 2007. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2006 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for

the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 27, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17229 Filed 8–31–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–448 and 731–TA–1117 (Preliminary)]

Certain Off-the-Road Tires From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured, by reason of imports from China of certain off-the-road tires, provided for in subheadings 4011.20.10, 4011.20.50, 4011.61.00, 4011.62.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.93.40, 4011.93.80, 4011.94.40, and 4011.94.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On June 18, 2007, a petition was filed with the Commission and Commerce by Titan Tire Corporation, Des Moines, IA, and The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA., alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain off-the-road tires from China. Accordingly, effective June 18, 2007, the Commission instituted countervailing duty and antidumping investigation Nos. 701–TA–448 and 731–TA–1117 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 22, 2007 (72 FR 34478). The conference was held in Washington, DC, on July 9, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 27, 2007. The views of the Commission are contained in USITC Publication 3943 (August 2007), entitled *Certain Off-the-Road Tires From China: Investigation Nos. 701–TA–448 and 731–TA–1117 (Preliminary).*

By order of the Commission.

Issued: August 27, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–17235 Filed 8–31–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 28, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including

among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Brenda Aguilar, OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of currently approved collection.

Title: Regulation Relating to Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan.

OMB Number: 1210–0076.

Frequency: On occasion.

Type of Response: Third-party disclosure.

Affected Public: Private Sector: Business or other for-profit and Not-for-profit institutions.

Estimated Number of Respondents: 1,700.

Estimated Total Burden Hours: 1.

Estimated Total Annual Costs (operating/maintaining systems or purchasing services): $556,000.

Description: The Department's regulation at 29 CFR 2550.408b–1 describes the terms, under section 408(b)(1) of the Employee Retirement Income Security Act (ERISA), whereby plans loans to participants and beneficiaries are exempt from ERISA's prohibited transaction rules. Inter alia, the regulation describes the specific provisions regarding such loans that must be included in the plan document for the statutory exemption to apply.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–17387 Filed 8–31–07; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of Board of Directors Finance Committee

TIMES AND DATES: The *Finance Committee* of the Legal Services Corporation's Board of Directors will meet at 10 a.m. Eastern Time on September 17, 2007.

LOCATION: Legal Services Corporation Headquarters, 3rd Floor Conference Center, 333 K Street, NW., Washington, DC

PUBLIC OBSERVATION BY TELEPHONE: Members of public that wish to listen to the meeting live may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may be solicited from time to time by the presiding Chairman.

CALL-IN DIRECTIONS FOR BOTH MEETINGS:

- Call toll-free number 1–800–621–8349;
- When prompted, enter the following numeric pass code: 57758;
- When connected to the call, please ''MUTE'' your telephone immediately. You may do so by dialing ''*6''.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Agenda

1. Approval of agenda.
2. Presentation of the Financial Report through July 31, 2007.
3. Consider and act on LSC's FY 2009 Appropriations Request.
   a. Staff Presentation.
   b. Presentation by the American Bar Association.
   c. Presentation by the National Legal Aid and Defender Association.
   d. Other public comments.
4. Consider and act on other business.
5. Consider and act on adjournment.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: August 30, 2007.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 07–4315 Filed 8–30–07; 10:50 am]

BILLING CODE 7050–01–M

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–10]

Notice of the September 12, 2007 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 2 p.m. to 4 p.m., Wednesday, September 12, 2007.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Suzi M. Morris via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to initiate the FY 2008 country selection process by identifying countries that will be candidates for Millennium Challenge Account (''MCA'') assistance in FY 2008 based on the per capita income and other requirements of Section 606(a) of the Millennium Challenge Act of 2003 (Pub. L. 108–199 (Division D)) (the ''Act''); to consider proposed Millennium Challenge Account (''MCA'') Compacts under the provisions of Section 605(a) of the Millennium Challenge Act, codified at 22 U.S.C. 7704(a); and to consider MCC Threshold Program submissions for FY 2007 MCA assistance under Section 616 of the Millennium Challenge Act of 2003 (the ''Act'') codified at 22 U.S.C. 7715; and certain administrative

matters, all which are expected to involve the discussion of classified information. The meeting will be closed to the public.

Dated: August 30, 2007.

Henry Pitney,

Vice President and General Counsel (Acting), Millennium Challenge Corporation.

[FR Doc. 07–4333 Filed 8–30–07; 3:45 pm]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (07–061)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

As required in Section 305(b) of the National Aeronautics and Space Act of 1958 and the NASA Supplement to the Federal Acquisition Regulation, NASA R&D contracts require contractor/recipient reporting of new technologies to NASA using NASA eNTRe system for electronic submissions and NASA Form 1679 for paper submissions.

II. Method of Collection

NASA will utilize a web-base on-line form to collect this information. Approximately 65 per cent of the responses will be collected electronically.

III. Data

Title: AST-Technology Utilization.

OMB Number: 2700–0009.

Type of Review: Regular.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 830.

Estimated Time Per Response: 1 hour for manual responses and 0.75 hour for electronic responses.

Estimated Total Annual Burden Hours: 1075.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Executive Officer.

[FR Doc. E7–17453 Filed 8–31–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 4, 2007. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means: Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *requestschedule@nara.gov*. FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules,

however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Cooperative State Research, Education, and Extension Service (N1–540–07–4, 24 items, 16 temporary items). Program management records, including institutional reviews, management studies, training course development records, routine committee and conference records, and working files, drafts, duplicates, and reference materials relating to these activities. Proposed for permanent retention are recordkeeping copies of committee secretariat and agency-sponsored conference program records, published articles, and the speeches and presentations of agency administrators. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Agriculture, Cooperative State Research, Education, and Extension Service (N1–540–07–5, 6 items, 6 temporary items). Budget records, including planning and estimate development, presentation, and execution records; background and working files; and reimbursable agreements. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–06–4, 3 items, 1 temporary item). System outputs associated with an electronic information system designed to track Arlington National Cemetery's decedent data. Included are decedent reports, daily funeral schedules, and temporary grave marker reports. The electronic system master file and documentation are proposed for permanent retention.

4. Department of the Army, Agency-wide (N1–AU–07–4, 3 items, 3 temporary items). Outputs, master file, and documentation associated with an electronic information system used to track basic human resources data on individuals enlisting in the U.S. Army.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–07–1, 1 item, 1 temporary item). Coastal Resource Coordinator records consisting of responses to requests for comment or involvement as a natural resource trustee.

6. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–07–2, 1 item, 1 temporary item). Training and workshop records. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–07–3, 1 item, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium, for grant files. Paper recordkeeping copies of these files were previously approved for disposal.

8. Department of Defense, Office of the Secretary of Defense (N1–330–07–3, 1 item, 1 temporary item). Master file associated with an electronic information system used to process visit requests for foreign nationals to Department of Defense components and contractor facilities. Data includes lists of individuals and associated personal data.

9. Department of Defense, Defense Commissary Agency (N1–506–07–10, 2 items, 2 temporary items). Records pertaining to safety. Included are surveys, reviews, inspection reports, notices of unhealthy working conditions, records of changes made as a result of recommendations, correspondence, inspection logs, and related records on safety at agency facilities. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of Defense, Defense Commissary Agency (N1–506–07–11, 4 items, 4 temporary items). Records pertaining to agency operations. Included are agency reading files, visual aids used during internal agency briefings, staff meeting minutes, and conference presentations. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

11. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–06–2, 1 item, 1 temporary item). Records of the International Cable System. Included are system copies of budget, travel, and personnel cables between the agency, its field posts, and U.S. embassies. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

12. Department of Homeland Security, National Protection and Programs Directorate (N1–563–07–7, 4 items, 4 temporary items). Inputs, master files, and outputs for the Chemical Security Assessment Tool database, which contains information used to assess high risk chemical facilities. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of Homeland Security, Office of Intelligence and Analysis (N1–563–07–11, 8 items, 8 temporary items). Inputs, master files, and outputs for the Intelligence Watch and Warning 24 Hour Log database, which contains intelligence reports about events that may constitute a threat to homeland security. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium for all schedule items except the master files.

14. Department of Homeland Security, Transportation Security Administration (N1–560–07–2, 8 items, 8 temporary items). Inputs, outputs, master file, and documentation relating to a system containing data on individuals who have been identified either correctly or incorrectly as a threat to transportation security and are petitioning the government for redress.

15. Department of State, Bureau of Overseas Buildings Operations (N1–59–07–5, 2 items, 2 temporary items). Resource management files used to document the expenditure of capital

program funds and policy within the bureau.

16. Environmental Protection Agency, Headquarters (N1–412–07–51, 6 items, 6 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. Included are records relating to administration of the Toxic Substances Control Act, including notices of exports, administrative tracking and control records, supporting information, log books, and registers. Paper recordkeeping copies of these files were previously approved for disposal.

17. Environmental Protection Agency, Agency-wide (N1–412–07–58, 23 items, 12 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to Office of Water records, regardless of recordkeeping medium. The records include watersheds needs survey records, water contamination incident reports, state water standards files postdating 1974, state water quality reports, and additives products files. Paper recordkeeping copies of these files were previously approved for disposal. Records proposed for permanent retention include final reports to Congress, state water standard historical files, 1965–1974, effluent guidelines studies, municipal waste facility inventories, fish kill annual reports, approved alternate test procedure application files, and 404 program files. Paper recordkeeping copies of these files were previously approved as permanent.

Dated: August 28, 2007.

Howard P. Lowell,

Deputy Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E7–17394 Filed 8–31–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Proposed Collection, Submission for OMB Review, Public Libraries Survey, 2008–2010

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the contact section below on or before October 4, 2007.

OMB is particularly interested in comments that help the agency to:

- 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 collocation of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: Barbara G. Smith, E-Projects Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC. Ms. Smith can be reached by telephone: 202–653–4688; fax: 202–653–8625; or e-mail: *bsmith@imls.gov.*

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* Section 210 of the Act supports IMLS' data collection and analysis role. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

The Public Libraries Survey, conducted by the U.S. Department of Education, has OMB clearance number 1850–0689; it expires 7/31/2008. Plans are underway for the transfer of the Public Libraries Survey from the Dept. of Education to the Institute of Museum and Library Services beginning with Fiscal Year 2008. The responsibility for this data collection, and for the clearance process, will be transferred entirely to IMLS provided that funds are appropriated to the agency for this purpose in FY 2008.

Abstract: This survey collects annual descriptive data on the universe of public libraries in the U.S. and the Outlying Areas. Information such as public service hours per year, circulation of library books, etc., number of librarians, population of legal service area, expenditures for library collections, staff salary data, and access to technology are collected. Data are collected from each public library and are coordinated at the state level by a state data coordinator.

Current Actions: This notice proposes clearance of the Public Libraries Survey. The 60-day Notice for the ''Public Libraries Survey'' was published in the **Federal Register** on February 5, 2007 (FR vol. 72, no. 23, pgs 5301–5302.) No comments were received.

OMB Number: n/a.

Agency Number: 3137.

Affected Public: Federal, state and local governments, public libraries, state library agencies, general public.

Number of Respondents: 55.

Frequency: Annually.

Burden hours per respondent: 39.8 hours; *Total burden hours:* 2,189.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: August 29, 2007.

Barbara G. Smith,

E-Projects Officer, Office of the Chief Information Officer.

[FR Doc. E7–17395 Filed 8–31–07; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the

following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 63, ''Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada.''

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* One time.

5. *Who will be required or asked to report:* The State of Nevada, local governments, or affected Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of the potential high-level waste geologic repository site, or wishing to participate in a license application review for the potential geologic repository.

6. *An estimate of the number of annual responses:* 9.

7. *The estimated number of annual respondents:* 3.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 363 (An average of 40 hours per response for consultation requests, 80 hours per response for license application review participation proposals, and one hour per response for statements of representative authority).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 63 requires the State of Nevada, local governments, or affected Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of the potential repository site, or wish to participate in a license application review for the potential repository. Representatives of the State of Nevada, local governments, or affected Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the State, local governments, and affected Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

A copy of the final 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 should be directed to the OMB reviewer listed below by October 4, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Nathan J. Frey, Desk Officer, Office of Information and Regulatory Affairs (3150–0199), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, 301–415–7245.

Dated at Rockville, Maryland, this 27th day of August, 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–17400 Filed 8–31–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PROJ0734, PROJ0735, PROJ0736, POOM–32]

Notice of Availability of NUREG–1854, NRC Staff Guidance for Activities Related to U.S. Department of Energy Waste Determinations, Draft Final Report for Interim Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Draft Final Report for Interim Use.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing draft final NRC staff guidance for activities related to U.S. Department of Energy (DOE) waste determinations (NUREG–1854), for interim use. NUREG–1854 provides guidance to the NRC staff in evaluating non-high-level waste determinations developed by DOE for the Savannah River Site, Idaho National Laboratory, Hanford, and West Valley for certain wastes that are a result of the reprocessing of spent nuclear fuel. NUREG–1854 provides elements the NRC staff should review to fulfill its responsibilities under the Ronald Reagan Defense Authorization Act for Fiscal Year 2005 (NDAA), which is to consult with DOE on its waste determinations and to monitor DOE disposal actions to assess compliance with the performance objectives in 10 CFR part 61, subpart C. NUREG–1854 does not set forth regulatory requirements for NRC or for DOE, and compliance with NUREG–1854 is not required.

ADDRESSES: NUREG–1854 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically from the ADAMS Public Library component on the NRC Web Site, *http://www.nrc.gov* (the Electronic Reading Room) [ML072360184]. For those without access to the Internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 301–415–4737 or toll free at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: Michael Fuller, U.S. Nuclear Regulatory Commission, Mail Stop T8–F5, Washington, DC 20555, Phone Number: (301) 415–0520, e-mail: *mlf2@nrc.gov.*

SUPPLEMENTARY INFORMATION: In October 2004, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) was enacted. Section 3116 of the NDAA gave the NRC new responsibilities with respect to DOE waste management activities for certain ''incidental'' waste resulting from the reprocessing of spent nuclear fuel within the States of South Carolina and Idaho. These responsibilities include consultation with DOE on DOE's determination whether the waste is not high-level waste (HLW), as well as monitoring DOE's disposal actions for these wastes. The concept behind incidental waste is that some material, resulting from the reprocessing of spent nuclear fuel, does not need to be disposed of as HLW in a geologic repository because the residual radioactive contamination, if properly controlled, is sufficiently low that it does not represent a hazard to public health and safety. Consequently, incidental waste is not considered to be HLW, but instead is low-level waste. DOE uses technical analyses that are documented in a waste determination to evaluate whether waste is incidental or HLW. A waste determination provides DOE's analysis as to whether the waste

will meet the applicable incidental waste criteria.

Prior to passage of the NDAA, DOE would periodically request NRC to provide technical advice for specific waste determinations. The staff reviewed DOE's waste determinations to assess whether they had sound technical assumptions, analysis, and conclusions with regard to meeting the applicable incidental waste criteria. Because the enactment of the NDAA is expected to increase the number of waste determinations submitted to the NRC for review, the NRC has decided to develop NUREG–1854, NRC Staff Guidance for Activities Related to U.S. Department of Energy Waste Determinations, Draft Final Report for Interim Use. The NUREG provides guidance to NRC staff on how to conduct a technical review of a waste determination, as well as how to conduct monitoring activities under the NDAA, and will help ensure consistency across different reviews and different reviewers. Because the technical aspects of the NRC's waste determination reviews are expected to be similar for all four sites, regardless of whether the site is covered by the NDAA, the NRC has decided that this NUREG will address reviews for the Savannah River Site, Idaho National Laboratory, Hanford, and West Valley.

Dated at Rockville, MD this 28th day of August, 2007.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–17399 Filed 8–31–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56328; File No. SR–NYSEArca–2007–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units) and Rule 8.100 (Portfolio Depositary Receipts) in Connection With the Dissemination of Information in Extended Hours Trading

August 28, 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 July 26, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''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, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units) and Rule 8.100 (Portfolio Depositary Receipts) relating to dissemination of the index value and Intraday Indicative Value (''IIV'') (as defined in Commentary .01(c) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(c) to NYSE Arca Equities Rule 8.100) during the Core Trading Session.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

NYSE Arca Equities Rule 7.34(a) provides for three equities trading sessions on the Exchange: The Opening Session (4 a.m. to 9:30 a.m. Eastern Time (''E.T.'')), the Core Trading Session (9 a.m. to 4 p.m. E.T.), and the Late Trading Session (4 p.m. to 8 p.m. E.T.).

Currently, NYSE Arca Equities Rules 5.2(j)(3)(E) and 8.100(f) provide that the Exchange may designate a series of Investment Company Units (''Units'') and Portfolio Depository Receipts (''PDRs'' together with Units, referred to herein as exchange-traded funds or ''ETFs''), respectively, to trade during the Opening Session and Late Trading Session. For an ETF listed on NYSE Arca or traded on the Exchange pursuant to unlisted trading privileges (''UTP''), an updated current index value must be widely disseminated during the time the ETF trades on the Exchange.[4] Current NYSE Arca Equities Rules 5.2(j)(3)(E) and 8.100(f) also require that, for an ETF listed or traded on the Exchange on a UTP basis, an updated IIV be disseminated during the Core Trading Session and, if applicable, the Opening Session. Similar provisions relating to the dissemination of index value and IIV apply to Units and PDRs based on indexes or portfolios consisting of fixed income securities[5] as well as indexes consisting of both equities and fixed income securities.[6]

The Exchange proposes to permit securities listed or traded on the Exchange (including on a UTP basis) pursuant to Rule 19b–4(e) to be traded in all three trading sessions without the requirement to disseminate an IIV or index value.[7] The Exchange, therefore, in this filing is proposing to delete as unnecessary NYSE Arca Equities Rule 5.2(j)(3)(E) and NYSE Arca Equities Rule 8.100(f), which set forth the requirements for the dissemination of such information if the Exchange designates a series of Units or PDRs for trading during the Opening and Late Trading Sessions, respectively. In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(b)(2) and .03(a)(ii), and NYSE Arca Equities Rule 8.100, Commentaries .01(b)(3) and .03(a)(ii), to specify that the current index value for a Unit or PDR listed or traded on the Exchange pursuant to UTP must be widely disseminated during the Core Trading Session, rather than any time the security trades on the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 7.34(a) defines the trading hours on the NYSE Arca Marketplace.

[4] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(b)(2); 8.100, Commentary. 01(b)(3). *See also* e-mail from Tim Malinowski, Director, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division of Market Regulation, Securities and Exchange Commission on August 23, 2007 (''NYSEArca e-mail'').

[5] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii) and (c); NYSE Arca Equities Rule 8.100, Commentary .02 (b)(ii) and (c).

[6] *See* NYSE Arca Equities Rules 5.2(j)(3), Commentary .03(a)(ii) and (b); NYSE Arca Equities Rule 8.100, Commentary .03(a)(ii) and (b).

[7] *See* NYSEArca e-mail. *See also* NYSEArca–2007–73 (proposing to trade securities listed and/or traded on the Exchange on a UTP basis other than pursuant to Rule 19b–4(e) in all three trading sessions).

(*i.e.,* the Opening Session and Late Trading Session). The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(c) and .02(c), and NYSE Arca Equities Rule 8.100, Commentaries .01(c) and .02(c), to clarify that the IIV must be updated during the Core Trading Session, and not both the Core Trading Sessions and the Opening Session.

The Exchange intends to distribute to its ETP Holders and make available on its Web site at *http://www.nyse.com* a Regulatory Information Bulletin titled ''Exchange-Traded Funds—Extended Trading Hours'' that discloses, among other things that: (1) The current underlying index value and IIV may not be updated during the Opening Session and Late Trading Session; (2) the IIV may not be updated during the Opening Session and Late Trading Session; (3) lower liquidity in the Opening Session or Late Trading Session may impact pricing; (4) higher volatility in the Opening Session or Late Trading Session may impact pricing; (5) wider spreads may occur in the Opening Session and Late Trading Session; (6) the circumstances that trigger trading halts; (7) required customer disclosures; and (8) suitability requirements. In addition, the Exchange has amended NYSE Arca Equities Rule 7.34(e) (Customer Disclosures) to require ETP Holders to disclose to customers the additional risk associated with the lack of dissemination of the index value and the IIV during extended hours trading in ETFs.[8]

The Exchange believes that, with this additional disclosure, it is appropriate to permit trading during all Exchange trading sessions notwithstanding the absence of dissemination of an updated index value or IIV during all or part of the Opening and Late Trading Sessions. In addition, the Exchange notes that NYSE Arca Equities Rules 5.2(j)(3) and 8.100 would retain the requirement that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, because of time zone differences or holidays in countries where the index component stocks trade), then the last calculated official index value must remain available throughout Exchange trading hours. Similarly, if the IIV does not change during any portion of Exchange trading hours, then the last official calculated IIV must remain available throughout the Exchange's trading hours.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2007–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–73 and should be submitted on or before September 25, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–17409 Filed 8–31–07; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* Securities Exchange Act Release No. 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (NYSEArca–2007–74).

[9] *See* NYSE Arca Equities Rules 5.2(j)(3), Commentary .01(b)(2) and (c); 8.100, Commentary .01(b)(3) and (c).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0360]

Zero Stage Capital V, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital V, L.P., 265 Franklin Street, 18th Floor, Boston, MA 02110, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the Licensee's General Partner's continued role in managing the Licensee's assets after the sale of such assets to a buyer group, has sought an exemption under section 312 of the Act and section 107.730(a), self-deal which constitutes Conflicts of Interest of the Small Business Administration (''SBA'') rules. Zero Stage Capital Associates V, LP, the General partner of the Licensee, proposes to continue managing the Licensee's assets, which will be acquired by an institutional buyer (''Buyer'').

The management arrangement is brought within the purview of Sec. 107.730(a) of the Regulations because the Licensee's managers will benefit from their continued management role after the sale of the portfolio to the Buyer. Therefore, this management arrangement constitutes a conflict of interest which requires SBA's prior approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Harry Haskins,

Acting Associate Administrator For Investment.

[FR Doc. 07–4306 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11004 and #11005]

Minnesota Disaster #MN–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1717–DR), dated 08/23/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 and continuing.

EFFECTIVE DATE: 08/23/2007.

Physical Loan Application Deadline Date: 10/22/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 05/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/23/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Fillmore, Houston, Winona.

Contiguous Counties (Economic Injury Loans Only):

Minnesota: Mower, Olmsted, Wabasha.

Iowa: Allamakee, Howard, Winneshiek.

Wisconsin: Buffalo, La Crosse, Trempealeau, Vernon.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 110046 and for economic injury is 110050.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 07–4307 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10991]

Minnesota Disaster #MN–00010 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Minnesota, dated 08/22/2007.

Incident: Collapse of Interstate 35W Bridge.

Incident Period: 08/01/2007.

EFFECTIVE DATE: 08/22/2007.

EIDL Loan Application Deadline Date: 05/22/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Hennepin.

Contiguous Counties:

Minnesota: Anoka, Carver, Dakota, Ramsey, Scott, Sherburne, Wright.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 109910.

The State which received an EIDL Declaration # is Minnesota.

(Catalog of Federal Domestic Assistance Number 59002)

Steven C. Preston,

Administrator.

[FR Doc. E7–17392 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11004 and #11005]

Minnesota Disaster Number MN–00011

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1717–DR), dated 08/23/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 and continuing.

EFFECTIVE DATE: 08/24/2007.

Physical Loan Application Deadline Date: 10/22/2007.

EIDL Loan Application Deadline Date: 05/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Minnesota, dated 08/23/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Olmsted, Steele,Wabasha.

Contiguous Counties:

Minnesota: Dodge, Freeborn, Goodhue, Rice, Waseca.

Wisconsin: Pepin.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–17397 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10992]

North Carolina Disaster # NC–00010 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of North Carolina, dated 08/22/2007.

Incident: Fire in the Town of Spruce Pine.

Incident Period: 08/04/2007 through 08/05/2007.

EFFECTIVE DATE: 08/22/2007.

EIDL Loan Application Deadline Date: 05/22/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Mitchell.

Contiguous Counties:

North Carolina: Avery, Mcdowell, Yancey.

Tennessee: Carter, Unicoi.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 109920.

The States which received an EIDL Declaration # are North Carolina, Tennessee.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: August 22, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–17393 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11008 and #11009]

Oklahoma Disaster #OK–00013

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1718–DR), dated 08/24/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 08/18/2007 and continuing.

EFFECTIVE DATE: 08/24/2007.

Physical Loan Application Deadline Date: 10/23/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 05/26/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/24/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Blaine, Caddo, Kingfisher.

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Canadian, Comanche, Custer, Dewey, Garfield, Grady, Kiowa, Logan, Major, Oklahoma, Washita.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere:	6.250
Homeowners without Credit Available Elsewhere:	3.125
Businesses with Credit Available Elsewhere:	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere:	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 110086 and for economic injury is 110090.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–17391 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10993]

South Carolina Disaster #SC–00004 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL)

declaration for the State of South Carolina, dated 08/22/2007.

Incident: McTeer Bridge Closure.

Incident Period: 04/26/2007.

EFFECTIVE DATE: 08/22/2007.

EIDL Loan Application Deadline Date: 05/22/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Beaufort.

Contiguous Counties:

South Carolina: Colleton, Hampton, Jasper.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 109930.

The State which received an EIDL Declaration # is South Carolina.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: August 22, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–17389 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11006 and #11007]

South Dakota Disaster #SD–00013

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of South Dakota dated 08/27/2007.

Incident: Flash Flooding.

Incident Period: 08/17/2007.

EFFECTIVE DATE: 08/27/2007.

Physical Loan Application Deadline Date: 10/26/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 05/27/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Custer.

Contiguous Counties:

South Dakota: Fall River, Pennington, Shannon.

Wyoming: Niobrara, Weston.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	6.250
Homeowners without Credit Available Elsewhere	3.125
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
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 11006 6 and for economic injury is 11007 0.

The States which received an EIDL Declaration # are South Dakota, Wyoming.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 27, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–17396 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11010 and #11011]

Wisconsin Disaster #WI–00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1719–DR), dated 08/26/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 and continuing.

EFFECTIVE DATE: 08/26/2007.

Physical Loan Application Deadline Date: 10/25/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 05/26/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/26/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Crawford, La Crosse, Richland, Sauk, Vernon.

Contiguous Counties (Economic Injury Loans Only):

Wisconsin: Adams, Columbia, Dane, Grant, Iowa, Jackson, Juneau, Monroe, Trempealeau.

Iowa: Allamakee, Clayton.

Minnesota: Houston, Winona.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.250
Homeowners without Credit Available Elsewhere	3.125
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 110106 and for economic injury is 110110.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–17398 Filed 8–31–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Document No. SSA–2007–0056]

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Teleconference.

DATES: September 20, 2007—2 p.m. to 4 p.m. Eastern Daylight Savings Time Ticket to Work and Work Incentives Advisory Panel Conference Call.

Call-in number: 1–888–790–4158.

Pass code: PANEL TELECONFERENCE.

Leader/Host: Berthy De la Rosa-Aponte.

SUPPLEMENTARY INFORMATION:

Type of meeting: On September 20, 2007, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a teleconference. This teleconference meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 established 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 Act. 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).

The interested public is invited to listen to the teleconference by calling the phone number listed above. Public testimony will be taken from 3:30 p.m. until 4 p.m. Eastern Daylight Savings Time. You must be registered to give public comment. Contact information is given at the end of this notice.

Agenda: The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

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 Debra Tidwell-Peters at (202) 358–6126.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*
- To register for the public comment portion of the meeting please contact Debra Tidwell-Peters by calling (202) 358–6126, or by e-mail to *debra.tidwell-peters@ssa.gov.*

Dated: August 28, 2007.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E7–17408 Filed 8–31–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5925]

60-Day Notice of Proposed Information Collection: Refugee Biographic Data, OMB Control Number 1405–0102

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Refugee Biographic Data.

OMB Control Number: 1405–0102.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: Bureau of Population, Refugees, and Migration, PRM/A.

Form Number: N/A.

Respondents: Refugee applicants for the U.S. Resettlement Program.

Estimated Number of Respondents: 70,000.

Estimated Number of Responses: 70,000.

Average Hours Per Response: One-half hour.

Total Estimated Burden: 35,000 hours.

Frequency: Once per respondent.

Obligation to Respond: Required to Obtain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from September 4, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *E-mail: firesteinjy@state.gov.* You must submit information collection title and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* PRM/Admission, 2401 E Street, NW. Suite L505, SA–1 Washington, DC 20522.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Jessica Firestein, PRM/Admission, 2401 E Street, NW. Suite L505, SA–1 Washington, DC 20522, who may be reached at 202–663–1045.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a sponsoring voluntary agency to ensure initial reception and placement in the U.S.under the United States Refugee Program administered by the Bureau for Population, Refugees, and Migration.

Methodology: Biographic information is collected in a face-to-face interview of the applicant overseas. An employee of an Overseas Processing Entity, under contract with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Dated: August 20, 2007.

Terry Rusch,

Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. E7–17426 Filed 8–31–07; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 5923]

Notice of Receipt of Application for a Presidential Permit To Construct a New International Rail Bridge Between Webb County, TX and Colombia, Mexico

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 15, 2007 the Department of State received an application for a Presidential Permit authorizing the construction, operation and maintenance of a new international rail bridge crossing between Webb County, Texas and Colombia, State of Nuevo Leon, Mexico, known hereafter as the ''Colombia Rail Bridge.'' This application has been filed by the Webb County Rural Transportation District located in Laredo, Texas. This construction project, which would be carried out in partnership with a number of local, state, federal and bi-national entities, would be located 31 river miles upstream or northwest of the existing Laredo International Rail Bridge that goes through downtown Nuevo Laredo and Laredo. The Department of State's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended by Executive Order 12847, dated May 17, 1993, Executive Order 13284, dated January 23, 2003 and Executive Order 13337, dated April 30, 2004. As provided in E.O. 11423, the Department is circulating this application to concerned agencies for comment.

DATES: Interested parties are invited to submit written comments relative to this application on or before November 5, 2007 to Daniel D. Darrach, Coordinator, U.S.-Mexico Border Affairs, WHA/MEX, HST Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Daniel D. Darrach, Coordinator, U.S.-Mexico Border Affairs, WHA/MEX, HST Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520. Telephone: (202) 647–8529, fax: (202) 647–5752.

SUPPLEMENTARY INFORMATION: The application and related documents that are a part of the record to be considered by the Department of State in connection with this application are available for review in the Office of Mexican Affairs, Border Affairs Unit, Department of State, during normal business hours throughout the comment period. Any questions related to this notice may be addressed to Mr. Darrach using the contact information above.

Dated: August 28, 2007.

Daniel D. Darrach,

Coordinator, U.S.-Mexico Border Affairs, Department of State.

[FR Doc. E7–17435 Filed 8–31–07; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 5924]

IJC Invites Public Comment on Proposed Decision for Lake Ontario-St. Lawrence River Regulation

The International Joint Commission (IJC) invites public comment on its draft Order of Approval, new regulation plan and other matters related to the regulation of water levels and flows on Lake Ontario and the St. Lawrence River. The IJC intends to make a final decision by the end of this year.

Background Documents

A draft Order of Approval, overview of the new regulation plan and several background documents will be available on September 17, 2007 on the IJC's Web site or from the contacts listed below. The Order of Approval identifies the requirements for setting Lake Ontario outflows that must be met in order to protect all affected interests in the United States and Canada. The regulation plan specifies how the outflow will be set to meet the requirements of the Order under particular water supply conditions at particular times of the year.

Online Public Briefings

The IJC will provide online public briefings to explain its proposed decision and answer questions on October 9, 2007. The same information will be provided at both briefings. Information on how to participate in the public briefings will be announced as soon as it is available.

October 9, 2007, 2 p.m.–3 p.m.
October 9, 2007, 7 p.m.–8 p.m.

Public Hearings

The IJC will accept public comment on its draft Order of Approval, new regulation plan and related matters during public hearings at the following times and locations. Participants are requested to summarize their spoken comments in two-to-three minutes and to provide more detailed comments in writing.

Monday, October 29, 7 p.m.–9 p.m.:
Toronto City Hall, 100 Queen St. West, Toronto ON M5H 2N2.

Tuesday, October 30, 1 p.m.–3 p.m.:
Olcott Fire Company, 1691 Lockport Olcott Road, Olcott, NY 14126.

Tuesday, October 30, 7 p.m.–9 p.m.:
Greece Town Hall, Eastman Room, 1 Vince Toffany Boulevard, Greece, NY 14612.

Thursday, November 1, 7 p.m.–9 p.m.:
American Foundry, 246 West Seneca Street, Oswego, NY 13126.

Monday, November 5, 7 p.m.–9 p.m.:
The City of Kingston, City Hall—Memorial Hall, 216 Ontario Street, Kingston, ON K7L 2Z3.

Tuesday, November 6, 7 p.m.–9 p.m.:
Bonnie Castle, 31 Holland Street, Alexandria Bay, NY 13607.

Wednesday, November 7, 7 p.m.–9 p.m.:
Best Western Parkway Inn and Conference Centre, 1515 Vincent Massey Drive, Cornwall, ON K6H 5R6.

Thursday, November 8, 7 p.m.–9 p.m.:
Biosphère, 160, Chemin Tour-de-l'Isle, Ste-Hèlènè Island, Montreal, PQ H3C 4G8.

Written Comments

Written comments will be accepted at the public hearings, or at either of the addresses below until November 16, 2007.

Secretary, U.S. Section, International Joint Commission, 1250 23rd Street, NW. Suite 100, Washington, DC 20440. Fax: 202–467–0746. E-mail: *Commission@washington.ijc.org.*

Secretary, Canadian Section, International Joint Commission, 234 Laurier Avenue, 22nd Floor, Ottawa, ON K1P 6K6. Fax: 613–993–5583. E-mail: *Commission@ottawa.ijc.org.*

How to Obtain Documents

All documents will be available on the IJC Web site on September 17, 2007 at: *http://www.ijc.org.*

If you would like documents mailed to you, please contact the IJC by telephone or e-mail and provide your name and address: Telephone: (202) 736–9016. E-mail: *Commission@washington.ijc.org.*

Dated: August 28, 2007.

James G. Chandler,

Acting Secretary, U.S. Section, International Joint Commission, Department of State.

[FR Doc. E7–17431 Filed 8–31–07; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Washoe County, NV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed intersection improvement project in the City of Sparks, Washoe County, NV.

FOR FURTHER INFORMATION CONTACT: Mr. Abdelmoez A. Abdalla, Environmental Program Manager, Federal Highway Administration, 705 N. Plaza, Suite 220, Carson City, NV 89701, Telephone: (775) 687–1231; Mr. Daryl James, Chief, Environmental Service Division, Nevada Department of Transportation, 1263 S. Stewart Street, Carson City, Nevada 89712, Telephone: (775) 888–7686; or Mr. William Vann, Jr., Regional Transportation Commission, 1105 Terminal Way, Suite 108, Reno, Nevada 89502, Telephone: (775) 335–1877.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nevada Department of Transportation (NDOT) and the Regional Transportation Commission of Washoe County (RTC), will prepare an environmental impact statement (EIS) on a proposal to improve the Pyramid Way (SR 445) and McCarran Boulevard (SR 650) intersection in the City of Sparks, Washoe County, Nevada. The FHWA will serve as the Lead Federal Agency while the NDOT and the RTC will serve as Joint Lead Agencies. The new SAFETEA–LU environmental review process will be followed.

The Pyramid Way at McCarran Boulevard intersection serves the transportation needs of the communities in Washoe County and the City of Sparks. This intersection links commuters from unincorporated Washoe County and the City of Sparks to employment and service centers located within the Cities of Reno and Sparks. The current and projected traffic congestion and operational characteristics of this intersection necessitate improvement. Workshops with residents and businesses in the project area and regional commuters using the intersection will be held to solicit input on the project's purpose and need, range of alternatives to be considered, preferred alternative, methodologies, and level of details for the analysis of alternatives.

The purpose of the proposed project is to relieve congestion, enhance traffic operations of the intersection, improve safety, and accommodate the future increase in traffic volumes. Traffic is expected to increase by 58% by 2012, the planned opening year of the project. In the surrounding area, population is anticipated to increase 112% by 2012 while employment will increase over 400% in the same timeframe.

The EIS will consider various improvement alternatives as well as a no action alternative. Alternatives that have been examined include a Pyramid Way grade separation, an expanded at-grade intersection, and an eastbound McCarran Boulevard to northbound Pyramid Way direct connection. Other alternatives will be considered as part of the public workshops and environmental review process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this project. In addition to the workshops, project scoping meetings will be held in Sparks, Nevada in the Fall of 2007 with appropriate participating and cooperating agencies as well as the general public. In addition, public meetings will be held during the development of the project and a public hearing will be held for the draft EIS. Public notices will be given announcing the time and place of the public meetings and the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, NDOT, or RTC at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 42 U.S.C. 4321 *et seq.*, 49 CFR 1.48(d)(17), and 40 CFR 1501.7.

Issued on: August 28, 2007.

Susan Klekar,

Division Administrator, FHWA, Nevada Division.

[FR Doc. 07–4300 Filed 8–31–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13560

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 13560, HCTC Health Plan Administrator (HPA) Return of Funds Form.

DATES: Written comments should be received on or before November 5, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to David C. Brown, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Robert Black at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Robert.G.Black@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 13560, HCTC Health Plan Administrator (HPA) Return of Funds form.

OMB Number: 1545–1891.

Form Number: Form 13560.

Abstract: Form 13560 is completed by Health Plan Administrators (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentation for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent.

Current Actions: Form 13561 was previously part of this collection and is now obsolete. There is no change in the total burden hours previously approved by OMB. This form is being submitted for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

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: August 27, 2007.

David C. Brown,

IRS Reports Clearance Officer.

[FR Doc. E7–17444 Filed 8–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of closed meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 26 and 27, 2007.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 26 and 27, 2007, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on September 26 and 27, 2007, in Room 4136 beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Karen S. Ammons,

Deputy Chief, Appeals.

[FR Doc. E7–17452 Filed 8–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Boards

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will serve as members on IRS' Fiscal Year 2007 Senior Executive Service (SES) Performance Review Boards.

DATES: This notice is effective October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Darwin McCallian, 575 North Pennsylvania Street, Mail Stop AW210, Indianapolis, Indiana, 46204, (317) 685–7694.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members to the Internal Revenue Service's SES Performance Review Boards. The names and titles of the executives serving on the boards follow:

Linda E. Stiff, Deputy Commissioner for Operations Support
Brady Bennett, Deputy Commissioner, Small Business/Self Employed
Robert B. Buggs, IRS Human Capital Officer
Richard E. Byrd, Deputy Commissioner, Wage and Investment
Susan W. Carroll, Director, Accounts Management (W&I)
Patricia Chaback, Industry Director, Communications, Technical and Media (LMSB)
Michael V. Culpepper, Director Hunan Resources (SB/SE)
Alison L. Doone, Deputy Chief Financial Officer
Vicki S. Duane, Director, Philadelphia Field Operations (CI)
James A. Dumais, Project Director (CIO)
James P. Falcone, Chief, Agency-wide Shared Services
Daniel Galik, Associate CIO, Cyber Security
Gina Garza, Associate CIO, Applications Development
Arthur L. Gonzalez, Deputy Chief Information Officer
Joseph Grant, Director of Employee Plans (TEGE)
James M. Grimes, Director, Compliance (W&I)
Dirk A. Heil, Director, Strategy and Finance (SB/SE)
Sarah Hall Ingram, Chief Appeals
Kathy P. Jantzen, Associate CIO, Enterprise Operations
Michael D. Julianelle, Director of Government Entities (TEGE)
Frank Keith, Chief, Communications and Liaison
Janice Lambert, Chief Financial Officer
Lois G. Lerner, Director Exempt Organizations (TEGE)
Clarence A. Martin, Director Operations, Policy and Support (CI)
Eileen C. Mayer, Chief Criminal Investigation
Mark J. Mazur, Director, Research, Analysis, and Statistics
David L. Medeck, Business Modernization Executive (W&I)
Steven T. Miller, Commissioner, Tax Exempt and Government Entities
Melvin M. Mitchell, Deputy Associate CIO, Applications Development
Richard J. Morgante, Commissioner, Wage and Investment
Frank Y. Ng, Deputy Commissioner (International), Large and Mid-Size Business
Nina E. Olson, National Taxpayer Advocate
Kathy K. Petronchak, Commissioner, Small Business/Self Employed
Kenneth M. Riccini, Associate CIO, Enterprise Networks

Kenneth Riche, Director, Strategy (CI)
Julie Rushin, Director, Strategy and Finance (W&I)
Cheryl M. Sherwood, Director, Field Operations East (Appeals)
Victor S. O. Song, Director, Laguna Field Operations
Richard A. Spires, Chief Information Officer
Peter J. Stipek, Director, Customer Accounts Services, (W&I)
Dora A. Trevino, acting Chief, EEO and Diversity
Curt Turner, Associate CIO, Management
Bruce B. Unger, Deputy Commissioner (Operations), Large and Mid-Size Business
Christopher Wagner, Deputy Commissioner, Tax Exempt and Government Entities Division

This document does not meet the Department of the Treasury's criteria for significant regulations.

Dated: August 27, 2007.

Linda E. Stiff,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. E7–17449 Filed 8–31–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
September 4, 2007

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0146; FRL–8461–3]

RIN 2060–AO55

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the national emission standards for petroleum refineries to address the risk remaining after application of the 1995 standards. This action also provides the results of EPA's 8-year review of developments in practices, processes, and control technologies that have occurred since the time EPA adopted the emissions standards. Based on the results of the residual risk and technology review, this action proposes two options for both wastewater treatment systems and storage vessels. For wastewater treatment systems, the first option would not require any additional controls as necessary to address residual risk or under the technology review. The second option would require refineries to apply new or additional requirements for wastewater treatment systems. For storage vessels, the first option would also not require any additional controls as necessary to address residual risk or under the technology review and the second option would require refineries to apply new or additional requirements for storage vessels. Finally, we are also proposing two options for amendments to add emissions standards for cooling towers.

DATES: Comments must be received on or before November 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0146 (for petroleum refineries), by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries: Residual Risk Standards Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket and Information Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0146. 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 www.regulations.gov or in hard copy at the National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries: Residual Risk Standards Docket, Environmental Protection Agency, EPA West Building, 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 and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884; fax number (919) 541–0246; e-mail address: *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The regulated category and entities affected by this proposed action include:

Category	NAICS [1] code	Examples of regulated entities
Industry	32411	Petroleum refineries located at a major source that are subject to 40 CFR part 63, subpart CC.

[1] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. To determine whether your facility would be regulated by the proposed amendments, you should carefully examine the applicability criteria in 40 CFR 63.100 of subpart CC (National

Emission Standards for Hazardous Air Pollutants From Petroleum Refineries). If you have any questions regarding the applicability of this action to a particular entity, contact either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

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

Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID EPA–HQ–OAR–2003–0146 (for petroleum refineries). Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN(s policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed amendments by September 17, 2007, we will hold a public hearing on October 1, 2007. If you are interested in attending the public hearing, contact Bob Lucas at (919) 541–0884 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

E. How is this document organized?

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments to EPA?
C. Where can I get a copy of this document?
D. When would a public hearing occur?
E. How is this document organized?
II. Background Information
A. What is the statutory authority for regulating hazardous air pollutants?
B. What source category is affected by this action?
C. What are the emissions sources at petroleum refineries?
D. What hazardous air pollutants are emitted from petroleum refineries?
E. What does the NESHAP require?
III. Summary of Proposed Amendments to NESHAP for Petroleum Refineries
A. What options are we proposing?
B. What are the proposed requirements to meet CAA sections 112(f)(2) and (d)(6) for storage vessels?
C. What are the proposed requirements to meet CAA sections 112 (f)(2) and (d)(6) for EBU used to treat Group 1 wastewater streams?
D. What are the proposed requirements for cooling towers under CAA sections 112(d)(2) and (f)(2)?
E. What other revisions are we proposing?
F. What is the compliance schedule for the proposed amendments?
IV. Rationale for Proposed Amendments
A. What actions are we proposing under CAA section 112(d)(2)?
B. How did we estimate residual risk?
C. What are the residual risks from petroleum refineries?
D. What are the uncertainties in risk assessments?
E. What is our proposed decision under CAA section 112(f)?
F. What is EPA proposing pursuant to CAA section 112(d)(6)?
V. Request for Comments
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background Information

A. What is the statutory authority for regulating hazardous air pollutants?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in section 112(b) of the CAA, section 112(d) calls for us to promulgate national emission standards for hazardous air pollutants (NESHAP) for those sources. For ''major sources'' that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year, these technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT, we must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. We published the final MACT standards for petroleum refineries (40 CFR part 63, subpart CC) on August 18, 1995 (60 FR 43620).

The EPA is then required to review these technology-based standards and to revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, under CAA section 112(d)(6). In this proposal, we are publishing the results of our 8-year review for the petroleum refineries source category. We are required by a consent decree to propose the results of our CAA section 112(d)(6) review by

August 21, 2007. The consent decree also requires EPA to consider and address the application of the NESHAP general provisions in 40 CFR part 63, subpart A to the existing rule.

The second stage in standard-setting focuses on reducing any remaining ''residual'' risk according to CAA section 112(f). This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity of emitting sources, and recommendations as to legislation regarding such remaining risk. EPA prepared and submitted this report (Residual Risk Report to Congress, EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA Section 112(f)(2) requires us to determine for source categories subject to certain section 112(d) standards whether the emissions limitations protect public health with an ample margin of safety. If the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1-in-1 million,'' EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety to protect public health. The EPA must also adopt more stringent standards if necessary to prevent an adverse environmental effect (defined in CAA section 112(a)(7) as any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *), but must consider cost, energy, safety, and other relevant factors in doing so. Section 112(f)(2) of the CAA expressly preserves our use of a two-step process for developing standards to address any residual risk and our interpretation of ''ample margin of safety'' developed in the National Emission Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants (Benzene NESHAP) (54 FR 38044, September 14, 1989).

The first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are set (unless a more stringent standard is required to prevent an adverse environmental effect after the consideration of costs, energy, safety, and other relevant factors).

The terms ''individual most exposed,'' ''acceptable level,'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) directs us to use the interpretation set out in the Benzene NESHAP. See also, A Legislative History of the Clean Air Act Amendments of 1990, volume 1, p. 877 (Senate debate on Conference Report). We notified Congress in the Residual Risk Report to Congress that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) Protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million; and (2) limiting to no higher than approximately 1-in-10 thousand [i.e., 100-in-1 million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The Agency also stated that, ''The EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risk to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population.'' The Agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.'' [1] As explained more fully in our Residual Risk Report to Congress, EPA does not define ''rigid line[s] of acceptability,'' but considers rather broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11).

The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (54 FR 38045, quoting the *Vinyl Chloride* decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately 1-in-10 thousand, that risk level is considered acceptable.'' We discussed the maximum individual lifetime cancer risk as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' We acknowledge that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper bound that is unlikely to be exceeded.''

Understanding that there are both benefits and limitations to using maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination.

The Agency also explained in the 1989 Benzene NESHAP the following: ''In establishing a presumption for MIR, rather than rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health

[1] In the Benzene NESHAP decision, the Agency considered the same risk measures in the ''acceptability'' analysis as in the ''margin of safety'' analysis, stating: ''In the ample margin decision, the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors. Considering all of these factors, the Agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112.''

effects, effects due to co-location of facilities, and co-emission of pollutants.''

In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone.

B. What source category is affected by this action?

Petroleum refineries are facilities engaged in refining and producing products made from crude oil or unfinished petroleum derivatives. Based on the Energy Information Administration's Refinery Capacity Report 2006, there are 150 operable petroleum refineries in the United States (U.S.) and the U.S. territories. A few of these 150 refineries have integrated operations between two nearby, but non-contiguous, locations. Therefore, we have identified and have data on 153 distinct petroleum refinery facilities (according to the definition of facility in the CAA), all of which are major sources of HAP emissions. Petroleum refineries are located in 35 States, as well as Puerto Rico and the U.S. Virgin Islands. Texas, Louisiana, and California are the States with the most petroleum refining capacity. The permitting process has begun for construction of a new refinery in Arizona; this is the only newly constructed refinery anticipated over the next 5 years. However, a few additional refineries have announced significant expansion or modification projects that will essentially double their refining capacity.

EPA listed two separate Petroleum Refinery source categories for regulation under CAA section 112(d), both of which include any facility engaged in producing gasoline, naphtha, kerosene, jet fuels, distillate fuel oils, residual fuel oils, lubricants, or other products from crude oil or unfinished petroleum derivatives. The first and primary source category for which regulations were developed, Petroleum Refineries—Other Sources Not Distinctly Listed (Refinery MACT 1), includes all emission sources from petroleum refinery process units except those that were expected to be regulated elsewhere, such as the NESHAP for Boilers and Process Heaters (40 CFR part 63 subpart DDDDD). Refinery process units include, but are not limited to: Crude distillation, vacuum distillation, thermal cracking, catalytic cracking, catalytic reforming, hydrotreating, hydrorefining, isomerization, polymerization, lube oil processing, and hydrogen production. The Refinery MACT 1 rule specifically excludes three types of process vents: Catalytic cracking unit catalyst regeneration vents, catalytic reforming unit catalyst regeneration vents, and sulfur plant vents. These specific vents are regulated by the NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (Refinery MACT 2) in 40 CFR part 63, subpart UUU. It is important to note that equipment leaks and wastewater produced from catalytic cracking units, catalytic reforming units, and sulfur recovery units are subject to Refinery MACT 1; only the process vent emissions associated with these units are subject to Refinery MACT 2.

C. What are the emissions sources at petroleum refineries?

The emissions sources subject to the Refinery MACT 1 rule include miscellaneous process vents, storage vessels, wastewater streams, and equipment leaks associated with petroleum refining process units, as well as gasoline loading racks and marine tank vessel loading operations located at a petroleum refinery. Storage vessels and equipment leaks associated with a bulk gasoline terminal or pipeline breakout station located at a petroleum refinery and under common control of the refinery are also subject to Refinery MACT 1. Cooling towers associated with petroleum refining process units are part of the MACT 1 source category although no specific emission limitations were established for cooling towers in the original Refinery MACT 1 rule. Thus, there are seven general types of emission sources under Refinery MACT 1: Miscellaneous process vents, storage vessels, wastewater streams, equipment leaks, gasoline loading racks, marine tank vessel loading operations, and cooling towers. Each of these emission sources are described briefly in sections II.C.1 through II.C.7 of this preamble.

1. Miscellaneous Process Vents

Many unit operations at petroleum refineries generate gaseous streams that contain HAP. These streams may be routed to other unit operations for additional processing (i.e., a gas stream from a reactor that is routed to a distillation unit for separation) or they may be sent to a blowdown system or vented to the atmosphere. Miscellaneous process vents emit gases to the atmosphere, either directly or after passing through recovery and/or control devices.

2. Storage Vessels

Storage vessels contain crude oil, intermediate products, and finished products. Different types of vessels are used to store various types of products. Gases are stored in pressurized vessels that are not vented to the atmosphere during normal operations while liquids are stored in horizontal, fixed roof, or floating roof tanks, depending on properties and volumes to be stored. Liquids with vapor pressures greater than 11 pounds per square inch of air (psia) are typically stored in fixed roof tanks that are vented to a control device. Volatile liquids with vapor pressures up to 11 psia are usually stored in floating roof tanks because such vessels have lower emission rates than fixed roof tanks within this vapor pressure range. Emissions from storage vessels typically occur as working losses. As a storage vessel is filled, HAP-laden vapors inside the tank become displaced and can be emitted to the atmosphere. Also, diurnal temperature changes result in breathing losses of organic HAP-laden vapors from storage vessels.

3. Wastewater Streams

Many refinery process units generate wastewater streams that contain HAP. Significant wastewater sources include the crude desalting unit, process waters, steam stripper blowdown, and storage tank draws. Organic HAP compounds in the wastewater can volatilize and be emitted to the atmosphere from wastewater collection and treatment units if these units are open or vented to the atmosphere. Potential sources of HAP emissions associated with wastewater collection and treatment systems include drains, manholes, trenches, surface impoundments, oil/water separators, storage and treatment tanks, junction boxes, sumps, basins, and biological treatment systems.

4. Equipment Leaks

Equipment leaks are releases of process fluid or vapor from processing equipment, including pump and compressor seals, process valves, pressure relief devices, open-ended lines, flanges and other connectors, agitators, and instrumentation systems. These releases occur primarily at the interface between connected components of equipment or in sealing mechanisms.

5. Gasoline Loading Racks

Loading racks are the collection of equipment, including loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves used to fill gasoline cargo tanks. Emissions from loading racks may be

released when gasoline loaded into cargo tanks displaces vapors inside these containers.

6. Marine Vessel Loading Operations

Marine vessel loading operations load and unload liquid commodities in bulk, such as crude oil, gasoline and other fuels, and naphtha. The cargo is pumped from the terminal's large, above-ground storage tanks through a network of pipes and into a storage compartment (tank) on the vessel. The HAP emission result from the displaced vapors during the filling operation.

7. Cooling Towers

Cooling tower systems include closed loop recirculation systems and once through systems that receive non-contact process water from a heat exchanger for the purposes of cooling the process water prior to returning the water to the heat exchanger or discharging the water to another process unit, waste management unit, or to a receiving water body. Cooling towers typically use force draft air ventilation of the process water to cool the process water. Heat exchangers occasionally develop leaks which result in process fluids entering the cooling tower process water. The HAP and other organics in these process fluids are then emitted to the atmosphere due to stripping in the cooling tower. Cooling tower emissions arising from the addition of chemicals to the cooling water to prevent fouling or to decontaminate the water are not covered by this standard, but are instead covered under the Industrial Process Cooling Tower NESHAP.

D. What hazardous air pollutants are emitted from petroleum refineries?

The specific HAP emitted by petroleum refineries varies by facility and process operations but can include a variety of organic and inorganic compounds and metals. Emissions originate from various process vents, storage vessels, wastewater streams, loading racks, marine tank vessel loading operations, and equipment leaks associated with refining facilities. Process vents, wastewater streams, and storage vessels generally emit organic HAP. Organic compounds account for the majority of the total mass of HAP emitted by petroleum refinery sources, with toluene, hexane, mixed and individual isomers of xylenes, benzene, methanol, methyl tert-butyl ether, and ethyl benzene accounting for about 90 percent of the HAP mass emitted. Other HAP emissions may include biphenyl, 1,3-butadiene, cumene, carbon disulfide, carbonyl sulfide, cresols, ethylene dibromide, 1,2 dichloroethane, diethanolamine, ethylene glycol, methyl isobutyl ketone, 2,2,4-trimethylpentane, naphthalene, and phenol.

The HAP emitted from emissions sources subject to the Refinery MACT 1 rule are associated with a variety of health effects, depending on the specific pollutants involved and the degree and duration of exposure. The range of adverse health effects include cancer and a number of other chronic health disorders (e.g., aplastic anemia, panctopenia, pernicious anemia, lung structural changes) and a number of acute health disorders (difficulty in breathing, upper respiratory tract irritation, conjunctivitis, tremors, delirium, coma, convulsions). More details on the health effects of individual HAP may be found in numerous sources, including *http://www.epa.gov/iris.html, http://www.atsdr.cdc.govlmrls.html,* and *http://www.oehha.ca.gov/air/acute_rels/index.html*.

E. What does the NESHAP require?

The Refinery MACT 1 rule (40 CFR part 63, subpart CC) applies to petroleum refining process units and their collocated emissions points that are part of a plant site that is a major source and that emit or have equipment containing or contacting one or more of the 28 HAP listed in Table 1 in the appendix to the rule. Section 63.640(c) of the rule specifies that emissions points subject to the rule include an individual miscellaneous process vent, storage vessel, wastewater stream, or equipment leak associated with a petroleum refining process unit; an individual storage vessel or equipment leak associated with a bulk gasoline terminal or pipeline breakout station classified under Standard Industrial Classification (SIC) code 2911 located at a petroleum refinery; a gasoline loading rack classified under SIC code 2911 located at a petroleum refinery and under common control with the refinery; or a marine tank vessel loading operation located at a petroleum refinery. The rule establishes applicability criteria to distinguish between Group 1 emissions points and Group 2 emissions points. Controls are required only for emissions points meeting the Group 1 criteria. Group 2 emissions points are subject to recordkeeping requirements only. We estimate that the 1995 rule reduces HAP emissions by 53,000 tons per year (tpy)—a 59-percent reduction (60 FR 43248, August 18, 1995).

Section 63.641 of the rule defines Group 1 miscellaneous process vents as those with volatile organic compound (VOC) emissions equal to or greater than 33 kilograms per day (kg/day) (72 pounds per day (lb/day)) for existing sources and 6.8 kg/day (15 lb/day) for new sources. Under § 63.643, the owner or operator of a Group 1 miscellaneous process vent must reduce organic HAP using a flare that meets the equipment specifications in 40 CFR 63.11 of the general provisions (subpart A) or use a control device to reduce organic HAP emissions by 98 weight-percent or to a concentration of 20 parts per million by volume (ppmv dry basis, corrected to 3 percent oxygen).

Section 63.646(a) of the Refinery MACT 1 rule requires each Group 1 storage vessel to comply with 40 CFR 63.119 through 63.121 of subpart G (National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater). A Group 1 storage vessel at an existing refinery has a design storage capacity and maximum true vapor pressure greater than the values specified in the existing rule. Under 40 CFR 63.119, a Group 1 storage vessel must be equipped with an internal floating roof with proper seals, an external floating roof with proper seals, an external floating roof converted to an internal floating roof with proper seals, or a closed vent system to a control device that reduces HAP emissions by 95 percent or to 20 ppmv. Storage vessels at existing sources are not subject to certain equipment specifications and inspection requirements for automatic bleeder vents, gaskets, slotted membranes, and sleeve seals. See 40 CFR 63.640(c). The requirements for a Group 1 storage vessel at a new refinery apply to tanks with a smaller design capacity and lower vapor pressures and HAP liquid concentration. These tanks also must comply with the storage vessel requirements in 40 CFR part 63, subpart G.

Each Group 1 wastewater stream at a new or existing refinery must comply with 40 CFR 61.340 through 61.355 of the National Emission Standard for Benzene Waste Operations (BWON) in 40 CFR part 61, subpart FF. Group 1 wastewater streams are those wastewater streams (at a petroleum refinery that has a total annual benzene loading of 10 megagrams per year (Mg/yr) or greater) that have a flow rate greater than 0.02 liters per minute, a benzene concentration of 10 parts per million by weight (ppmw) or greater, and are not exempt from control requirements under the BWON. The BWON requires affected waste streams

to comply with one of several options for controlling benzene emissions from waste management units and treating the benzene containing wastes.

The Refinery MACT 1 rule requires the owner or operator of an existing refinery to comply with the equipment leak provisions in 40 CFR part 60, subpart VV (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry) for all equipment in organic HAP service. The term ''in organic HAP service'' means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP. The owner or operator of a new facility must comply with a modified version of 40 CFR part 63, subpart H (National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks). Both subpart VV of part 60 and modified subpart H of part 63 require inspection and repair of leaking equipment. The leak definition under subpart VV that triggers repair requirements is an instrument reading of 10,000 ppmv. In the modified version of subpart H, the leak definition for pumps and valves begins at 10,000 ppmv but drops to 2,000 ppmv or 1,000 ppmv, respectively, in subsequent years.

Group 1 gasoline loading racks at refineries must comply with the requirements of the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) in 40 CFR part 63, subpart R. Marine tank vessel loading operations at refineries must comply with the requirements in 40 CFR part 63, subpart Y (National Emission Standards for Marine Tank Vessel Loading Operations).

III. Summary of Proposed Amendments to NESHAP for Petroleum Refineries

A. What options are we proposing?

We are proposing regulatory options for storage vessels with external floating roofs and regulatory options for an enhanced biodegradation unit (EBU) to meet the requirements of CAA sections 112(f)(2) and (d)(6). We are also proposing options to require a leak detection and repair program for cooling towers under section 112(d)(2) and (f)(2).

A detailed summary of the proposed amendments under the requirements of CAA section 112(f)(2) and (d)(6) is provided below. This section also includes our discussion of the proposal to regulate cooling towers under CAA section 112(d)(2) and (f)(2). Our rationale for the proposed amendments is provided in section IV of this preamble.

B. What are the proposed requirements to meet CAA sections 112(f)(2) and (d)(6) for storage vessels?

Currently, the Refinery MACT 1 rule requires Group 1 storage vessels at an existing source to comply with the requirements in 40 CFR 63.119 through 63.121 of 40 CFR part 63, subpart G, except where specifically noted. Under 40 CFR 63.640(c) of the rule, storage vessels at existing sources are not subject to the requirements in 40 CFR 63.119(b)(5), (b)(6), (c)(2), and (d)(2) of subpart G. The requirements in 40 CFR 63.119(c)(2) contain equipment specifications for storage tanks with external floating roofs.

EPA is proposing two regulatory options for storage vessels. We believe that either of these options might achieve an ample margin of safety as described in the Benzene NESHAP. The Agency's basis for selecting one of these options in the final rule would reflect our consideration of the relative risk reduction and cost of the options, as well as consideration of other relevant factors as identified in the Benzene NESHAP. For existing storage vessels, Option 1 requires no revisions to the Refinery MACT 1 rule to meet the requirements of CAA section 112(d)(6) and (f)(2). Option 2 would remove the current exemption for the requirements in 40 CFR 63.119(c)(2)(ix) and (x) for slotted guide poles. Removal of this exemption would require the owner or operator of a Group 1 storage vessel at an existing source that is equipped with an external floating roof to equip each slotted guide pole with a gasketed sliding cover or flexible fabric sleeve seal and a gasketed cover or other device which closes off the liquid surface from the atmosphere. The proposed amendments also revise related inspection requirements in 40 CFR 63.646(e) and reporting requirements in 40 CFR 63.654(f)(1)(A)(1), (g)(1), and (g)(3)(iii)(A) to account for the requirements for slotted guide poles.

C. What are the proposed requirements to meet CAA sections 112(f)(2) and (d)(6) for EBU used to treat Group 1 wastewater streams?

EPA is proposing two regulatory options for EBU. We believe that either of these options might achieve an ample margin of safety as described in the Benzene NESHAP. The Agency's basis for selecting one of these options in the final rule would reflect our consideration of the relative risk reduction and cost of the options, as well as consideration of other relevant factors as identified in the Benzene NESHAP.

Option 1 requires no revisions to the Refinery MACT 1 rule to meet the requirements of CAA sections 112(f)(2) and (d)(6). Option 2 for EBU proposes to revise the wastewater provisions in the Refinery MACT 1 rule to add a specific performance standard and monitoring requirement for EBU. The proposed amendments require owners or operators to operate and maintain EBU to achieve a minimum treatment efficiency for benzene of 90 percent. The owner or operator would be required to conduct an initial performance demonstration using the procedures in 40 CFR part 63, appendix C (Determination of the Fraction Biodegraded (Fbio) in a Biological Treatment Unit). Based on the demonstration results, facilities would establish operating limits for the mixed liquor volatile suspended solids (MLVSS) concentration and the food-to-microorganism ratio according to the rule requirements. The operating parameters would be monitored at least once a week. Exceedance of an operating limit would be a deviation that must be reported in the periodic (semiannual) report required by 40 CFR 63.654.

D. What are the proposed requirements for cooling towers under CAA sections 112(d)(2) and (f)(2)?

Because the Refinery MACT 1 rule does not address HAP emissions from cooling towers, we are proposing to regulate cooling towers under CAA section 112(d)(2) and (d)(3) in this action. As we are proposing later in the preamble, once cooling towers have been regulated pursuant to CAA section (d)(2) and (d)(3), no additional controls are needed to provide an adequate margin of safety under CAA section (f)(2).

We are proposing work practice standards for cooling towers which would require the owner or operator of a new or existing source to monitor for leaks in the cooling tower return lines from heat exchangers in organic HAP service (i.e., lines that contain or contact fluids with 5 weight percent or greater of total organic HAP listed in Table 1 of the rule) and, where leaks are detected, to repair such leaks within a specified period of time. The two options that are being co-proposed differ in the detection methods used to identify leaks for existing sources, and in the frequency of monitoring for new sources. The first option reflects our MACT floor analysis and would reject imposing controls beyond the MACT

floor. Under this option, the owner or operator of existing source cooling towers receiving cooling water from heat exchangers in organic HAP service would be required to monitor chemical addition rates or other surrogate indicators of leaks. If the surrogate indicators suggest a leak, the owner or operator would conduct sampling and analyses to determine if the indicated leak is an organic HAP leak. For existing sources, an organic HAP leak is defined as an organic HAP concentration in the cooling tower water of 1 ppmw or greater. Owner and operators of new source cooling towers receiving cooling water from heat exchangers in organic HAP service would be required to conduct quarterly sampling and analyses to identify any organic HAP leaks into the cooling tower water and to take appropriate corrective action to fix the leaks.

Under the second option, we would select a control option based on our beyond the floor analysis and would require the owner or operator of new and existing sources to conduct monthly sampling and analyses to identify any organic HAP leaks into the cooling tower water.

Under both options, a leak into the cooling tower water would be defined as either a mass leak rate of 100 pounds of total organic HAP per day or greater or a mass leak rate of 10 pounds of any single organic HAP per day or greater. Under both options, if a leak is detected, the owner or operator would be required to identify the source of the leak as soon as practicable but not later than 30 days after receiving the sampling results. Unless a delay in repair is allowed under the proposed requirements, the owner or operator would be required to repair the leak no later than 30 days after identifying the source of the leak. The proposed rule would allow a delay in repair of the leak if repair of the leak would require the process unit served by the leaking heat exchanger to be shut down, and the shutdown would result in greater emissions than the potential emissions from the cooling tower leak from the time the leaking heat exchanger was first identified and the next planned shutdown. The owner or operator would be required to continue monthly monitoring and repair the heat exchanger within 30 days if sampling results show that the projected emissions from the cooling tower exceed the startup and shutdown emissions estimates. The proposed rule would also allow a delay in repair if the necessary parts are not reasonably available. In this case, the owner or operator would be required to complete the repair as soon as practicable upon receiving the necessary parts, but no later than 120 days after identifying the leaking heat exchanger. All new or existing refineries with a cooling tower system also would be required to prepare and follow a monitoring plan for cooling towers. The plan is necessary to document emissions potential for employing the delay of repair provisions.

E. What other revisions are we proposing?

We are also proposing clarifications to the requirements in the Refinery MACT 1 rule. The proposed amendments clarify that the control requirements for gasoline loading racks apply to Group 1 gasoline loading racks. ''Group 1 gasoline loading rack'' is the term used to define the affected emissions source subject to emissions control requirements. This clarification would amend 40 CFR 63.640 of subpart CC.

F. What is the compliance schedule for the proposed amendments?

The proposed amendments to the Refinery MACT 1 rule would become effective on the date of publication of the final amendments in the **Federal Register**. Under section 112 (i)(1) of the CAA, any new facility would be required to comply upon startup. For existing sources, CAA section 112(i)(3)(A) requires compliance no later than 3 years after the effective date of the standard. The proposed 3-year compliance date is appropriate because it will allow facilities time to perform monitoring and install required controls. For cooling towers, we are allowing 3 years to identify which towers are affected, to identify the ability to repair these cooling towers without a process unit turnaround, to determine the HAP emissions that would occur if a shutdown is required to control a heat exchanger leak, and to establish an appropriate monitoring program that meets the requirements of the proposed rule. For EBU, 3 years is necessary to perform tests of benzene destruction efficiency, to calculate the overall effectiveness of the EBU using the procedures in Appendix C, to establish appropriate monitoring provisions and install and test necessary equipment, and to make modifications to the EBU if necessary to increase the efficiency of the system to meet the proposed requirements. For storage tanks, 3 years are being proposed to allow flexibility in the addition of the guidepole controls for safety and operational concerns. In promulgating similar requirements for storage tanks, we have extended the compliance time until the next scheduled turnaround requiring emptying and degassing of the tank or 10 years, whichever is sooner. This is because the emissions that occur during emptying and degassing exceed the HAP emission reductions that would occur as a result of applying the controls. We are requesting comments on whether it is necessary to empty and degas tanks for retrofitting the proposed controls.

IV. Rationale for Proposed Amendments

A. What actions are we proposing under CAA section 112(d)(2)?

We did not establish standards for cooling towers in the Refinery MACT 1 rule. Industry emissions information and data demonstrate that organic HAP emissions from cooling towers at petroleum refineries are significant, and we are proposing to add emissions standards for organic HAP from cooling towers at petroleum refineries under the authority of CAA section 112(d)(2). Because the emissions from cooling towers are not emitted through a stack and are not practically measurable, we have established work practice standards as provided for under CAA section 112(h)(2) to address these emissions.

In evaluating the MACT floor, we must determine the average emissions limitations achieved by the top 12 percent of the affected sources. We have often interpreted the average of the top 12 percent as the performance of the 6th percentile unit. Of the 150 refineries, the 6th percentile is represented by the 9th ranked top-performing unit. Based on available information, we have determined that the top 12 percent of the industry currently implements cooling tower monitoring programs to detect and repair leaks of process fluids into cooling water using chemical usage rates or other surrogate indicators of heat exchanger leaks. Therefore, we have determined that the MACT floor for existing cooling towers is monitoring of surrogate indicators of heat exchanger leaks in cooling water and to repair leaks. The nationwide total annual cost (TAC) to conduct cooling tower monitoring of surrogate indicators and repairs is estimated to be $750,000. This cost includes a product recovery credit of $1.2 million, and includes no costs for repair of heat exchangers under that assumption that refiners would repair leaking heat exchangers when they are made aware of the leak as part of their routine operations. For large leaks, reasons for repairing leaks immediately could be safety concerns or the recovery of large product losses. For smaller leaks, these concerns might not be valid

and therefore refiners might incur additional costs beyond routine operations. EPA requests comment on the extent to which immediate repairs would be based on these concerns, and on typical costs of repair. The HAP emissions reduction for the MACT floor is estimated to be 373 tpy total HAP and 28.3 tpy of benzene. The HAP baseline for cooling towers was estimated to be 3,024 tpy.

The MACT floor for new sources is represented by the best-performing similar unit. Based on all of the information available, the best performance standard currently being implemented is direct organic chemical concentration monitoring of their Refinery MACT 1 cooling towers on a quarterly basis. Based on emissions data for the facility implementing this program, we have determined that the performance of this cooling tower monitoring program would limit leaks into the cooling water to less than 10 lbs/day of a single organic HAP and less than 100 lbs/day of total organic HAP. Therefore, we have determined that the MACT floor for new cooling towers is quarterly organic chemical-specific monitoring with an action level of 10 lbs/day or greater of a single organic HAP and 100 lbs/day or greater of total organic HAP.

EPA has concluded, based on available data, that existing industry monitoring of surrogate parameters will only detect large leaks, which would miss leaks that would generate significant organic HAP emissions (see memorandum to docket: Cooling towers: Control Options and Impact Estimates). EPA analyzed the amount of HAP that could be emitted from cooling water based on HAP concentration data and flow rates for cooling towers at several petroleum refinery facilities and decided to structure regulatory options to account for variable cooling water flow and minimum detection limit capabilities of 10 parts per billion by weight (ppbw) for the concentrations of individual HAP in water. For example, at a petroleum refinery with total organic HAP concentration of 30 ppbw and a cooling water flow rate of 40,000 gallons per minute (gal/min), the potential organic HAP emissions from the cooling tower are 14 lbs/day or over 2.5 tons if the leak lasted for a year.

As part of our beyond the floor analysis, we considered alternatives more stringent than the MACT floor option for existing and new sources. For existing and new sources, we identified two alternatives that would require monitoring by collecting a cooling water sample and analyzing for speciated HAP. In both alternatives, the cost of the monitoring is likely less than the value of the product that would no longer be lost to the atmosphere. Additionally, we have not included repair costs in any of the options as we considered these costs to be routine operational costs. The costs discussed also apply to new as well as existing sources, since there are no retrofit issues associated with the proposed monitoring program.

One alternative more stringent than the MACT floor includes *quarterly* monitoring of cooling water by water sampling and a leak definition of greater than or equal to 10 pounds of any single organic HAP or greater than or equal to 100 pounds organic HAP per day and results in a total annualized cost saving of $2.1 million. This savings includes a product recovery credit of $4.4 million. The organic HAP emissions reduction for this alternative regulatory option 1 is 1,330 tpy and the cost-effectiveness is −$1,600/ton.

Another alternative more stringent than the MACT floor includes *monthly* monitoring of cooling water by water sampling and a leak definition of greater than or equal to 10 pounds of any single organic HAP or greater than or equal to 100 pounds organic HAP per day. The nationwide TAC is a savings of $1.6 million, including a recovery credit of $5.7 million. The organic HAP emissions reduction for this alternative is 1,720 tpy. The cost-effectiveness of this alternative is −$920/ton.

EPA is co-proposing two options for finalizing MACT standards for new and existing cooling towers. Option 1 represents the MACT floor for new and existing units, as discussed above. Option 2 is more stringent than the MACT floor and is described above as requiring monthly (as opposed to quarterly) monitoring of individual (speciated) organic HAP. Table 1 of this preamble summarizes nationwide impacts of the proposed options.

TABLE 1.—NATIONWIDE IMPACTS FOR COOLING TOWER OPTIONS

Option	Monitoring cost ($1,000)	Product recovery credit ($1,000/yr)	Total annual cost ($1,000/yr)	HAP emissions (tons/yr HAP)	Cost-effectiveness ($/ton)	
					Overall	Incremental
Baseline	0	0	0	3,024	0	0
1 (MACT Floor)	1,990	−1,240	750	2,647	1,980	1,980
2 (Beyond the floor)	4,100	−5,680	−1,590	1,304	−920	−1,750

Note: The monthly monitoring alternative is projected to result in a positive incremental cost-effectiveness of $1,400 per ton (as compared to the quarterly alternative).

This analysis indicates that Option 2 will result in an overall cost savings. Further, the incremental cost-effectiveness of Option 2 monitoring compared to Option 1 is a negative $1,750/ton of HAP emissions controlled, which indicates a cost savings above the MACT floor option and is reasonable given these assumptions. However, there are some fundamental assumptions that may affect this analysis, for example, the amount of recovery credit generated by each program is uncertain and we did not consider repair costs or production downtime costs in our analysis. Therefore, we are co-proposing Option 1, the MACT floor option, and Option 2 in the event that the costs and feasibility of going beyond the floor are not reasonable. We are requesting comments on this analysis and on these options.

Additionally, under both options, a delay in repair is allowed under the proposed requirements if repair of the leak would require the process unit served by the leaking heat exchanger to be shut down, and the shutdown would result in greater HAP emissions than the projected HAP emissions from the cooling tower leak or if the necessary parts are not reasonably available. We request comments on other possible criteria for delay of repair in addition to these. In addition, we are requesting comments on another option for heat exchanger systems that cannot be repaired without a shutdown that would allow delay of repair until the next unit shutdown. This allowance could be contingent on factors such as the level of HAP emissions from the cooling tower or the duration to the next scheduled shutdown. Finally, we

request comments on tracking the HAP emissions that occur during the delayed repair and relationship between this monitoring and emission measurement and the reportable quantity requirements under CERCLA.

B. How did we estimate residual risk?

EPA modeled available data on the emissions from petroleum refineries to assess the risks associated with petroleum refinery HAP emissions after compliance with the Refinery MACT 1 standard but prior to the proposed MACT amendments for cooling towers. Consistent with previous residual risk assessments, standard air toxics risk assessment practices and principles were used to conduct assessments of potential chronic and acute exposures and risks for both inhalation and non-inhalation pathways. In addition, the potential for an adverse environmental effect arising from these sources was also evaluated. Complete documentation for the methods used and results from the risk assessment is available in a report entitled, draft Residual Risk Assessment for MACT 1 Petroleum Refining Sources, which is available in the docket.

Emissions data for 153 petroleum refineries nationwide were developed starting from the EPA's 2002 National Emissions Inventory (NEI), incorporating site-specific emissions and source information which were provided by the American Petroleum Institute (API) for 22 facilities. The emissions database was published for public comment through an Advanced Notice of Proposed Rulemaking (ANPRM). Comments and corrections to the database received during the public comment period were evaluated by technical reviewers for quality and consistency with engineering data; valid corrections to the database were incorporated for an additional 50 facilities (beyond the 22). No comments or corrections were received on the emissions or source data for 81 facilities.[2] The 153 refineries included in the database are believed to be all of the sources in the category.

C. What are the residual risks from petroleum refineries?

Table 2 of this preamble summarizes the results of the inhalation risk assessment. These estimates characterize the lifetime risk of developing cancer or noncancer health effects for individuals living within 50 kilometers (km) of any petroleum refinery.

TABLE 2.—RISK ESTIMATES DUE TO HAP EXPOSURE BASED ON 70-YEAR EXPOSURE DURATION

Parameter	Results for refinery MACT 1 source category
Maximum individual lifetime cancer risk (in 1 million)	70
Maximum hazard index [1] (chronic respiratory effects)	0.3
Estimated size of population at risk	90,000,000
greater than 1-in-1 million	460,000
greater than 10-in-1 million	6,000
greater than 100-in-1 million	0
Annual cancer incidence (number of cases per year)	0.04–0.09

[1] If the hazard index (HI) is calculated to be less than or equal to 1, then no adverse heath effects are expected as a result of the exposure.

We estimate that approximately 90 million people live within 50 km of a refinery. Results from the risk assessment indicate that none of the facilities posed a cancer risk greater than 100-in-1 million. Approximately 60 percent of the refineries have a maximum individual lifetime cancer risk (MIR) of greater than 1-in-1 million, and about 14 percent are associated with a MIR greater than 10-in-1 million. The highest MIR value at any facility is 70-in-1 million. The cumulative cancer incidence from all MACT 1 refinery emission sources is estimated to be between 0.04 and 0.09 cases per year, or 1 case every 11 to 25 years. Benzene, naphthalene, polycyclic organic matter, and ethylene dibromide emissions are responsible for most of the estimated cancer incidence. Since the benzene cancer unit risk estimate (URE) is reported as a range of values, each end of which is considered to be equally plausible, the range of incidence reflects calculated risks using either end of the range, as well as different methods for extrapolating the risks from subsets of facility emission estimates. Additionally, the maximum noncancer hazard index (HI) associated with emissions from any refinery is estimated to be less than 1. This allows us to conclude that human inhalation exposures to pollution from Refinery MACT 1 sources are without appreciable risk of chronic noncancer health effects, and that direct atmospheric exposures of these pollutants to ecological receptors should not result in any potential environmental impact.

We performed acute screening-level assessments of potential acute impacts of concern on each facility and refined those assessments by analyzing aerial photographs of facilities with potential exceedances of acute benchmarks to determine which potential exceedances were truly outside facility boundaries. The results indicated that 12 facilities show a potential to exceed 1-hour California acute Reference Exposure Levels (REL) for 3 pollutants (benzene, acrolein, and arsenic). The acute 1-hour REL is defined as the concentration level at or below which no adverse health effects are anticipated for a 1-hour exposure. Acute REL values are designed to protect the most sensitive individuals in a population by including margins of safety. The highest potential exceedance of any REL was for acrolein, and the REL was exceeded by a factor of 70. Other pollutants showing potential exceedances of the REL value are benzene (exceeded by a factor of 40), and arsenic (exceeded by a factor of 30). In spite of the fact that potential exceedances of these 3 acute REL values are shown by this analysis, none of the facilities investigated showed any potential to exceed available mild 1-hour Acute Exposure Guideline Levels (AEGL–1) for any of the modeled pollutants. The AEGL–1 is the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects.

Given the definitions of the acute REL and the AEGL–1, it is reasonable to conclude that (1) Health effects in humans could occur as exposures increase above the AEGL–1, and (2) exposures below the REL are very unlikely to result in adverse health effects. Potential exposures in between these values (which is what this analysis shows) are more difficult to interpret in terms of health risk. That is, these potential exposures are in the ''gray area'' of uncertainty where the true threshold for adverse effects lies, and thus it is not clear if adverse effects could actually occur at the levels determined by this analysis. Further, we did not refine these results by incorporating actual site-specific short-term emission variability into the analysis, so these results are believed to be very conservative and should be interpreted with care.

We also performed a screening-level multipathway risk assessment on the

[2] For an explanation of the corrections we accepted and the corrections we did not accept, see docket.

emissions of mercury, cadmium, lead, and polycyclic aromatic hydrocarbons (PAH), all compounds which are considered to be persistent and bioaccumulative HAP. Based on the results of this screening, noncancer human health risks due to the ingestion of these pollutants were all below levels considered to be without appreciable risk of adverse health effect. One of these pollutants, PAH, showed a potential to cause individual cancer risks as high as 40-in-1 million, exceeding 1-in-1 million, but less than 100-in-1 million. However, because of our inability to accurately speciate and estimate risks for individual compounds within the PAH class, we believe that this result is highly conservative, and that the true risks associated with these PAH are likely to be less than 1-in-1 million.

For the ecological assessment, two exceedances (cadmium and PAH) of ecological toxicity benchmarks were observed when examining the predicted TRIM.FaTE media concentrations (see Draft Residual Risk Assessment for MACT I Petroleum Refining Sources document). Given the conservative nature of the screening scenario, the results of the comparisons and a review of additional information available on the ecological toxicity of cadmium and PAH, we concluded that it is highly unlikely that these two exceedances are of concern. Overall, the potential for emissions from petroleum refinery sources to result in an adverse environmental impact is likely to be very low for all persistent bioaccumulative HAP emitted.

D. What are the uncertainties in risk assessments?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the petroleum refineries source categories affected by this proposal. A full discussion of uncertainties is found in the Draft Residual Risk Assessment for Petroleum Refining Sources (August 2007), available in the docket.

Although the development of the risk and technology review (RTR) database involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data present, incomplete or missing data, errors in estimating emissions values, and other factors. Our review of the data indicates that there may be a low bias in reported emissions for many facilities. It appears that data from several processes and operations are not included in the reported emissions from many facilities. These include exclusion of upset, malfunction, startup, and shutdown events as well as omission of emissions sources that are unexpected, not measured, or not considered in inventories, such as leaks in heat exchanger systems; emissions from process sewers and wastewater systems; fugitive emissions from delayed coking units; and emissions from tank roof landings. Further, the emissions values considered in this analysis are annual totals for a single calendar year (2002) and do not reflect actual fluctuations during the course of the year, as well as variations from year to year. Finally, although we have performed a significant amount of quality control on the data set, for many facilities the physical characteristics (i.e., stack height, physical location) of the reported sources may be inaccurate for detailed risk characterization purposes.

We recently discovered that certain area source location attributes may have been incorrectly incorporated into our atmospheric dispersion simulations, resulting in a positional translation error which may locate certain emission points closer to or farther from potentially-exposed populations. While the impact of this error has not been fully evaluated, we believe that it will not dramatically alter the MIR value for the source category, and that it will have very little impact on the total cancer incidence. Nonetheless, we will investigate and correct this error between proposal and promulgation of the final petroleum refineries MACT 1 residual risk decision and will consider any impact of this error in our final decision.

The uncertainties in our risk assessment can be generally divided into uncertainties in our ability to characterize exposures and uncertainties in our ability to characterize dose-response. We believe that the primary source of uncertainty in our exposure assessment is the uncertainty in the underlying emissions data, which are generally thought to be biased low, based on recent studies indicating that emission points such as cooling towers and wastewater treatment units are historically underestimated or even omitted from petroleum refinery emission inventories. Elsewhere in this notice, we request comment on methods that might reduce these emission uncertainties through moderate efforts to conduct ambient monitoring. The assessment uses toxicological dose-response values typically extrapolated from high-dose animal exposure or occupational exposures, to estimate risk. Consistent with EPA guidance, RfCs are developed by using order-of-magnitude factors to account for uncertainties in developing values protective of sensitive subpopulations. Most of the URE in this assessment were developed using linearized low-dose extrapolation. Risks could be overestimated if the true dose-response relationship (which is usually unknown) is sublinear. Impacts have been extrapolated from short-duration, high-dose animal or occupational exposures to longer durations and lower doses, using uncertain interspecies scaling methods. In general, EPA considers these URE's to be upper-bound estimates based on the method of extrapolation, meaning they represent a plausible upper limit to the true value. (Note that this is usually not a true statistical confidence limit.) The true risk is therefore likely to be less, could be as low as zero, but also could be greater. As previously noted, benzene cancer risks were estimated from the reported URE range, which is considered to be based on maximum likelihood exposure and risk estimates.

E. What is our proposed decision under CAA Section 112(f)?

Based on the emissions data we have, we estimate that the MIR associated with exposures to HAP emissions from the sources covered by the Refinery MACT 1 rule is 70-in-1 million. Because the MIR is less than 100-in-1 million, the risk is acceptable. However, since the MIR is greater than 1-in-1 million, we must consider whether to require additional controls to protect public health with an ample margin of safety.

In making the ample margin of safety determination, we consider the estimate of health risk and other health-related information (such as the weight of evidence for carcinogenicity or the severity of the noncancer health effect) along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors, consistent with the approach of the 1989 Benzene NESHAP, as summarized earlier.

In developing our proposed options under CAA section 112(f)(2), we considered control options for each of the Refinery MACT 1 emissions sources. In developing the control options, we wanted to target further emission reductions to the extent possible to reduce public health risks. The following provides a discussion of the control options that we evaluated for each of the Refinery MACT 1 emission sources.

1. Control Options Considered

a. Miscellaneous Process Vents, Gasoline Loading Racks, and Marine Vessel Loading Control Measures

Group 1 miscellaneous process vents and transfer loading operations (gasoline loading racks and marine vessel loading) are regulated by performance standards based on the use of technologies such as thermal oxidizers and carbon. We did not identify any other technically feasible control technologies that would reduce HAP emissions beyond these levels. Therefore, the only way to reduce residual risk would be to change the applicability (i.e., certain Group 2 emission points under the original rule would become Group 1 emission points under a revised rule). We could not identify any cost-effective control options; the control option based on lowering the Group 1 thresholds exceeds $40,000 per ton of HAP reduced and $400,000 per ton of benzene reduced.

b. Equipment Leak Control Measures

For equipment leaks, we evaluated reducing the leak definition and requiring monitoring of open-ended lines. The cost-effectiveness of this option is approximately $20,000 per ton of HAP reduced and approximately $300,000 per ton of benzene reduced. We rejected these options due to their unreasonable cost-effectiveness.

c. Storage Vessel Control Measures

For storage vessels, we evaluated two control alternatives for Group 1 external floating roof storage vessels. First, we considered requiring a gasketed sliding cover or a flexible fabric sleeve and requiring a gasketed float or other device which closes off the liquid surface from the atmosphere for slotted guide poles. Next, we considered requiring geodesic domes. The slotted guide pole sleeve control option would reduce HAP by 1,046 tpy and benzene emissions by 105 tpy. The annualized cost of this control option would be completely offset by the value of the organic products that would not be emitted by the addition of controls. The geodesic dome control option is not cost-effective when added to the proposed requirement for slotted guide pole sleeves.

d. Wastewater Control Measures

For refinery wastewater systems, the refinery MACT standard is based on the BWON requirements (55 FR 8346, 58 FR 3095). The BWON was developed under the two-step Benzene NESHAP approach and at that time we concluded that the controls provided an ample margin of safety. Because the BWON was incorporated by reference into the Petroleum Refineries MACT standard, we must now determine whether the BWON protects public health with an ample margin of safety. We believe that additional controls may be necessary to ensure an ample margin of safety.

We worked with industry to improve the emissions data used in the risk assessment. As part of this effort, refinery trade organizations provided EPA with detailed benzene emissions data from 22 petroleum refineries expected to be representative of the industry (see docket). Most refineries reported zero or minimal emissions from wastewater systems. For systems with EBU operating at 92 percent benzene reduction efficiency (the benzene reduction we estimated would be achieved in the BWON), we would expect benzene emissions on the order of 3 to 10 tpy, depending on the load into the system. The wastewater emissions reported the 22 refineries are much less than this amount, approximately 20 tpy, which leads us to believe that the emission estimates exclude or significantly under-report benzene emissions from the EBU.

For well-operated EBU, the benzene emissions are expected to be small; however, there are no requirements in the Refinery MACT 1 rule or the BWON to demonstrate the proper performance of EBU. Since the BWON was promulgated, we have developed procedures and test methods to verify the performance of EBU.

Analysis of the potential emissions and associated risks from EBU when the biological treatment efficiency is less than 90 percent indicates that these sources could contribute significantly to risk. Therefore, we are evaluating a control option that the EBU demonstrate a fraction biodegraded of 90 percent or greater for benzene through an initial performance demonstration. This would be coupled with weekly monitoring of process parameters.

e. Cooling Tower Control Measures

The Refinery MACT 1 rule does not include provisions for cooling towers; we are proposing MACT requirements for cooling towers to address total organic HAP emissions under CAA section 112(d)(2). Those requirements are described in section IV.A of this preamble. In that section, we discuss our floor and beyond the floor analysis pursuant to CAA section 112(d)(2) and (d)(3). We could not identify any additional control requirements that could cost-effectively reduce emissions from cooling towers beyond the options described above in our beyond-the-floor analysis.

More information of our evaluation of the control options considered for the Refinery MACT 1 emission sources is contained in memoranda in the docket.

f. Fenceline Monitoring

Numerous commenters on the ANPR for Phase II risk and technology review, including the Residual Risk Coalition representing the American Petroleum Institute, expressed concern about the quality and accuracy of emissions data available to conduct refined risk assessments. Based on our review of these data, we agree that there appears to be significant uncertainty, not only in identifying and characterizing emissions sources within facilities, but also in the amount and types of HAP emitted. In addition to inherent uncertainty in the development and use of emission factors, our review of the data indicates that there may be a low bias in reported emissions, as discussed earlier. Additional discussion of the potential low bias in emission estimates is available in the docket.

Our concerns regarding the potential low bias in the emission estimates leads us to request public comment on requiring fenceline monitoring of ambient benzene. A fenceline monitoring program may provide an effective method to assess the general magnitude of uncertainty in facility emissions estimates for benzene. Additional information on fenceline monitoring may be found in a technical memorandum in the docket.

2. Regulatory Decisions Under CAA Section 112(f)(2)

a. Regulatory Decision for Storage Vessels

We are proposing two options for our rulemaking on whether to establish additional emission standards to protect public health with an ample margin of safety. Option 1 is to maintain the current level of control in the Refinery MACT 1 rule with no further modifications. Option 2 includes controls for storage vessels.

Impacts of the proposed control option requiring existing storage vessels with external floating roofs to install and operate a gasketed sliding cover or a flexible fabric sleeve and a gasketed float or other device which closes off the liquid surface from the atmosphere for slotted guide poles were evaluated and are presented in Table 3 of this preamble along with the associated costs and emissions reductions. These controls prevent the loss of products from storage vessels. Therefore, the

control costs are offset by the increased product sales that are available by this pollution prevention. The VOC credit was calculated to be $480 per ton of VOC reduced, resulting in a net cost savings presented below. Table 4 of this preamble presents the risk reduction associated with the control option for storage vessels.

TABLE 3.—COST AND EMISSIONS IMPACTS OF OPTION 2 FOR STORAGE VESSELS

Control requirement	Total capital investment ($ million)	Total annualized cost without recovery ($ million)	Product recovery credit ($ million)	Total annualized cost ($ million)	HAP emissions (tpy)	Average cost per ton of HAP ($/ton)
Option 1 (Baseline)	0	0	0	0	1,867	0
Option 2 Storage Vessel Controls	2.76	1.1	−4.6	−3.5	821	−3,340

TABLE 4.—RISK IMPACTS OF REGULATORY ALTERNATIVE FOR STORAGE VESSELS

Parameter	Option 1 baseline	Option 2 storage vessel control
Risk to Most Exposed Individual:		
Cancer (in 1 million)	70	70
Noncancer (HI)	0.3	0.3
Size of Population at Cancer Risk:[1]		
> 100-in-1 million	0	0
> 10-in-1 million	6,000	5,100
> 1-in-1 million	460,000	393,000
Number of Plants at Cancer Risk Level:[1]		
> 100-in-1 million	0	0
> 10-in-1 million	21	15
> 1-in-1 million	96	91
Population with HI > 1[2]	0	0
No. of Plants with HI > 1	0	0
Cancer Incidence	0.04–.09	0.03–.08
Cancer Incidence Reduction (Percent)	NA	10–25
HAP Emission Reduction (Percent)	NA	15

[1] Population risks and plant risk bin estimates are based on utilizing the high end of the reported cancer URE range for benzene. These estimates may be as much as 30 percent lower when estimated using the lower end of the benzene URE range.
[2] If the Hazard Index (HI) is calculated to be less than or equal to 1, then no adverse health effects are expected as a result of the exposure.

Under option 1, we are proposing to make no changes to the current Refinery MACT rule, instead proposing to find that the current level of control called for by the existing MACT standard represents both an acceptable level of risk (the cancer risk to the most exposed individual is approximately 70-in-1 million) and provides public health protection with an ample margin of safety. This proposed finding is based on considering the uncertainty of the cost impacts of further control for individual refineries and the relatively small reductions in health risks that are achieved by further control.

The Agency would conclude under proposed option 1 that the $3.5 million per year nationwide cost savings is uncertain and that some refineries may have positive net costs under Option 2, and that these costs would be unreasonable given the minor associated risk reductions. Baseline cancer incidence under the current Refinery MACT 1 rule is estimated at 0.04 to .09, or 0.07 cases per year, on average. Proposed Option 2 would reduce incidence by about 0.01 cases per year. Statistically, this level of risk reduction means that Option 2 would prevent 1 cancer case every 100 years. Accordingly, if we were to conclude that there were not cost savings, the cost of this option could be considered to be disproportionate to the level of incidence reduction achieved. In addition, the Agency proposes to conclude that there are no changes in the distribution of risks reflected in Table 4 of this preamble (i.e., the MIR is not reduced from 70-in-1 million by additional control), and there are no noncancer HI values above 1. Consequently, under Option 1, we are proposing that it is not necessary to impose any additional controls on the industry to provide an ample margin of safety to protect public health.

Alternatively, we are also proposing that Option 2 provides an ample margin of safety to protect public health. This option reduces HAP emissions and risks beyond the current MACT standard using controls that are technically and economically feasible and that pose no adverse environmental impacts. We estimate that these changes would reduce the number of people at cancer risk greater than one in a million by 67,000 individuals and the cancer incidence by 0.01 cases per year (i.e., prevent one cancer case every 100 years). Option 2 would reduce emissions of VOC by 9,500 tpy. Reducing VOC provides the added benefit of reducing ambient concentrations of ozone and may reduce fine particulate matter. The annualized cost impacts of Option 2 are estimated to be a cost savings of $3.5 million. Our economic analysis (summarized later in this preamble) indicates that this cost will have little impact on the price and output of petroleum products.

b. Regulatory Decision for EBU

We are proposing two options for our rulemaking on whether to establish additional emission standards to protect public health with an ample margin of safety. Option 1 maintains the current level of control in the Refinery MACT 1 rule with no further modifications.

Option 2 requires refinery owners and operators of EBU to demonstrate and ensure a fraction biodegraded of 90 percent or greater for benzene through an initial performance demonstration coupled with weekly monitoring of process parameters to ensure the EBU are achieving the ample margin of safety as intended by the BWON rule. Impacts of the proposed Option 2 are presented in Table 5.

TABLE 5.—COST AND EMISSIONS IMPACTS OF OPTION 2 FOR EBU

Control requirement	Total installed capital cost ($ million)	Total annualized cost ($ million)	HAP emissions (tpy)	Average cost per ton of HAP ($/ton)
Option 1 (Baseline)	0	0	5,000	0
Option 2 EBU Performance Demonstration and Monitoring	0	1.1	3,200	600

Impacts presented in Table 5 assume that 50 percent of EBU may degrade benzene at an efficiency of 80 percent. In the development of the BWON, we estimated that EBU would achieve between 88 to 93 percent control efficiency (Final NESHAP Standards for Waste Operations: Basis for Impact Calculations, Feb. 1990), on average, and made the finding that the reductions achieved from EBU would result in acceptable risk, and we did not require further reductions as part of our ample margin of safety decision. At that time, we had no consistent method of characterizing the performance of these treatment systems. Since the promulgation of the Refinery MACT 1 rule, we have promulgated procedures in appendix C of 40 CFR Part 63 to estimate the performance of biological treatment systems and have required the use of appendix C to demonstrate treatment efficiencies on other industries that use biological treatment systems. Our experience with other industries suggest that, while high biological treatment efficiencies can be achieved for low volatility, oxygenated compounds, achievement of high control efficiencies for benzene and other aromatic compounds is more difficult. As noted previously, many refineries who provided data to the Agency reported zero or minimal emissions from wastewater treatment systems, many of which employ EBU for treatment. For EBU operating at 92 percent benzene reduction efficiency, we would expect benzene emissions ranging from 3 to 10 tons/year. The emissions reported by the 22 refineries are much less than this amount, which leads us to believe that the emission estimates exclude or significantly under-report benzene emissions from EBU. We specifically request comments on additional data that would address these concerns. Further, the use of appendix C by refineries at the present time is very limited, and, therefore, there is no data to either confirm or refute the validity of the original assumption of 92 percent made under the BWON.

The costs are based on the initial performance demonstration averaged over 5 years, so that the annual cost of the performance evaluation was $5,000/year. Once the performance evaluation is completed, refineries are expected to develop operating limits for the minimum MLVSS concentration and the maximum food to microorganism ratio, which must be determined on a weekly basis. Although owners and operators of EBU are expected to routinely conduct these analyses, we estimated that an additional cost of $5,000/year would be incurred for these analyses and the associated recordkeeping and reporting requirements. Additionally, we assumed that by altering the operating characteristics of the unit (e.g., increasing system mixing characteristics, increasing biomass or submerged aeration), we assumed that all of the units not originally achieving 90 percent treatment efficiency could achieve 90 percent treatment efficiency at no cost. EPA understands that significant material and/or labor costs actually might be incurred by owners/operators who implement treatment process changes such as adding or modifying aerators, or implementing other process improvements, and specifically requests comment on this assumption. Nevertheless, we currently estimate that refineries using EBU for treatment of affected wastewater streams would incur, on average, a cost of $10,000/year over the first 5 years.

Table 6 presents the estimated risk reductions for the EBU control Option. Table 6 also presents the risk impacts assuming a hypothetical baseline based on the addition of emissions from cooling towers and wastewater operations to the RTR dataset. It is important to note that the risk impacts resulting from a higher HAP baseline estimated assuming that 50 percent of EBU are achieving an average of 80 percent, rather than 92 percent control, and that this is an assumption (an estimate of hypothetical emissions) based on our judgment of what could be occurring in the industry, and is not based on actual emissions estimates or modeling. EPA specifically requests comment and data related to the validity of this assumption. The baseline benzene emissions were assumed to increase from 136 tpy benzene (in the RTR database) to 388 tpy benzene, and the reductions achieved as a result of imposing demonstration requirements leading to better EBU process controls were calculated to be 138 tpy benzene. Finally, based on a ratio of 7.7 percent benzene to HAP for wastewater, we calculated reductions of 1,800 tpy HAP from this option. Additionally, we also increased the adjusted baseline to account for unreported cooling tower emissions of 285 tpy benzene. Accordingly, risk impacts for the baseline were scaled linearly, and the EBU controls were estimated to reduce cancer incidence from the hypothetical baseline by .01 to .02. It should be noted that this is not a rigorous risk analysis, but a rough estimate of risk impacts based on projected wastewater emissions.

TABLE 6.—RISK IMPACTS OF REGULATORY ALTERNATIVE FOR EBU

Parameter	RTR baseline	Option 1 adjusted (hypothetical) baseline	Option 2 EBU controls (hypothetical)
Risk to Most Exposed Individual:			
Cancer (in 1 million)	70	70	70
Noncancer (HI)	0.3	0.3	0.3
Size of Population at Cancer Risk: [1]			
> 100-in-1 million	0	0	0
> 10-in-1 million	6,000	10,500	9,300
> 1-in-1 million	460,000	805,000	716,000
Number of Plants at Cancer Risk Level: [1]			
> 100-in-1 million	0	0	0
> 10-in-1 million	21	41	36
> 1-in-1 million	96	108	104
Population with HI > 1 [2]	0	0	0
No. of Plants with HI > 1	0	0	0
Cancer Incidence	0.04–0.09	0.07–.16	0.06–.14
Cancer Incidence Reduction (Percent)	.....	NA	15
HAP Emission Reduction (Percent)	.....	NA	11

[1] Population risks and plant risk estimates are based on utilizing the high end of the reported cancer URE range for benzene. These estimates may be as much as 30 percent lower when estimated using the lower end of the benzene URE range.
[2] If the Hazard Index (HI) is calculated to be less or equal to 1, then no adverse health effects are expected as a result of the exposure.

Under Option 1, we are proposing to make no changes to the current Refinery MACT rule, and are proposing that the current level of control under the existing MACT standard represents both an acceptable level of risk (the cancer risk to the most exposed individual is approximately 70-in-1 million) and provides public health protection with an ample margin of safety. This proposed finding is based on the existing data (emissions estimates from 22 refineries, the NEI, and from public review of the NEI data) that indicate that risks posed to wastewater treatment systems are low and that further reduction of such low risk is not warranted and is not necessary to achieve an ample margin of safety.

We are also proposing that Option 2 provides an ample margin of safety to protect public health. This option may reduce HAP emissions and risks beyond the current MACT standard using controls that are technically and economically feasible and that pose no adverse environmental impacts. Further, the option addresses the uncertainty in emissions estimates by requiring that owners and operators of EBU demonstrate their systems are effective as reflected by the low reported emissions estimates for wastewater treatment systems. We believe this option addresses the consideration of uncertainty in the ample margin of safety decision.

We estimate that these changes could reduce the number of people at cancer risk greater than one in a million by 89,000 individuals. In addition, Option 2 could reduce the cancer incidence by between 0.01 and 0.02 cases per year (i.e., prevent one cancer case every 100 to 50 years), depending on the accuracy of our assumptions, and resulting in a cost of $110 to $55 million per cancer case avoided. The annualized cost impacts of Option 2 are estimated at 1.1 million. Our economic analysis (summarized later in this preamble) indicates that this cost will have little impact on the price and output of petroleum products.

c. Regulatory Decision for Cooling Towers

Section 112(f)(2) of the CAA requires that we evaluate residual risk and set standards as necessary to protect human health with an ample margin of safety within 8 years of promulgation of a MACT standard. We are performing the CAA section 112(f)(2) review for all petroleum refinery MACT 1 sources, including cooling towers, in this proposal.

As stated previously, the petroleum refinery risks are now acceptable. We believe that with the controls proposed as meeting CAA sections (d)(2) and (d)(3), no additional controls for cooling towers are needed to provide an ample margin of safety under CAA section (f)(2). In the final rule we will select MACT as one of these two options or other options that are a logical outgrowth of public comments. We will then assess the risk that remains and also perform the ample margin of safety analysis in the manner described above.

F. What is EPA proposing pursuant to CAA section 112(d)(6)?

Section 112(d)(6) of the CAA requires us to review and revise MACT standards, as necessary, every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time. This authority provides us with broad discretion to revise the MACT standards as we determine necessary, and to account for a wide range of relevant factors.

We do not interpret CAA section 112(d)(6) as requiring another analysis of MACT floors for existing and new sources. Rather, we interpret the provision as essentially requiring us to consider developments in pollution control in the industry (''taking into account developments in practices, processes, and control technologies''), and assessing the costs of potentially stricter standards reflecting those developments (69 FR 48351). As the U.S. Court of Appeals for the District of Columbia Circuit has found regarding similar statutory provisions directing EPA to reach conclusions after considering various enumerated factors, we read this provision as providing EPA with substantial latitude in weighing these factors and arriving at an appropriate balance in revising our standards. This discretion also provides us with substantial flexibility in choosing how to apply modified standards, if necessary, to the affected industry.

In an earlier rulemaking, we elaborated on how we expect we would address the need for future reviews under certain circumstances and our position regarding when revisions may be likely under CAA section 112(d)(6). For more information on this subject, see Nation Emission Standards for

Hazardous Air Pollutants for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (71 FR 34437–34438, June 14, 2006).

We could not identify any other developments in practices, processes, and control technologies for Refinery MACT 1 sources. Therefore, as a result of this CAA section 112(d)(6) review, we are proposing the same two options as we proposed to meet section 112(f)(2). Based on the uncertainty of the cost of control for individual refineries and the relatively small reductions in health risks that are achieved by these controls, we are proposing that these controls are not necessary under 112(d)(6). Alternately, if we conclude in the final rule that there are cost savings associated with requiring slotted guidepole controls for storage vessels, we are proposing to require those controls pursuant to CAA section 112(d)(6).

The consent decree also requires us to consider and address the application of subpart A to subpart CC of part 63, as appropriate. The requirements of 40 CFR part 63, subpart A are contained in Table 6 of 40 CFR part 63, subpart CC. As a result of our review, no changes are currently proposed to Table 6 of the rule. However, as discussed in section V of this preamble, we are requesting comments on entries to the table that may be confusing to owners and operators.

V. Request for Comments

We request comment on all aspects of the proposed rule. All significant comments received during the comment period will be considered in the development and selection of the final rule. In addition to general comments on the proposed options, we particularly request comments and data on the following issues. Comments must provide supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information.

1. Fenceline Monitoring

Based on the residual risk results, one of the primary risk drivers from the Refinery MACT 1 emission sources is benzene. The primary releases of benzene are fugitive emissions from process equipment, wastewater treatment, storage tanks, and loading operations and generally occur near ground level. Thus, the highest benzene concentrations outside the facility will likely occur near ground level at the property boundaries. Consequently, monitoring at the property boundary (fenceline) would provide a measure of the annual average benzene concentrations immediately surrounding the refinery, which might be useful in efforts to eliminate uncertainties in emissions estimates.

As noted in section IV.H of this preamble, we are requesting comment on: the need for a fenceline monitoring program, potential monitoring methods (e.g., diffusive sampling or alternative active sampling methods, alternative sorbents for measuring HAP other than benzene), monitor siting, monitoring frequency, feasibility of various monitoring approaches/methods, sampling and analytical precision and accuracy, reliability of monitoring methods and devices, consideration of non-facility related emissions, and sampling and analytical costs.

2. Test Methods for Wastewater

We are also requesting comment on the applicability and feasibility of Method 5220 for the measurement of chemical oxygen demand (COD) in wastewater treated by EBU and alternative COD methods.

3. Applicability of Subpart A to Subpart CC

In addition, we request comments on Table 11 of the Appendix to subpart CC of 40 CFR part 63. The Appendix to subpart CC addresses the application of the 40 CFR part 63 General Provisions in subpart A to subpart CC of 40 CFR part 63. We have tried to make the Appendix to subpart CC consistent with the Appendix A in subpart UUU, the other 40 CFR part 63 MACT standard affecting petroleum refineries.

VI. 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 information collection requirements in the proposed amendments to the NESHAP for Petroleum Refining (40 CFR part 63, subpart CC) will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* A separate notice seeking public comment on these information collection requirements will be published in the **Federal Register**.

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

An agency may not conduct or sponsor, and a person is not required to, respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (a firm having no more than 1,500 employees and no more than 125,000 barrels per day of capacity of petroleum-based inputs, [3] including crude oil or bona fide feedstocks for NAICS code 32411); (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

[3] Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Based on our analyses of both options, the amendments would either result in a nationwide net cost of about $1.0 million or achieve a nationwide net savings (i.e., a return) of about $4.0 million per year due to reductions in product losses. Only one affected small firm would incur net costs as a result of the proposed amendments; all other small or large firms owning affected refineries would have net savings. Net costs for the affected small firm are well below 0.01 percent of its revenue; therefore, no adverse economic impacts are expected for any small entity. Thus, the costs associated with the proposal would not result in any ''significant'' adverse economic impact for any small entity.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed rule on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed rule and have included provisions for small facilities that address their concerns. We continue to be interested in the potential impacts of the proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or 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.

The EPA has determined that the proposed amendments 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 to the private sector in any 1 year. As discussed earlier in this preamble, these amendments result in nationwide net savings to the private sector. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments do not significantly or uniquely affect small governments. The proposed amendments contain no requirements that apply to such governments, and impose no obligations upon them. The proposed rule is not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed amendments do not have federalism implications. They would 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 proposed amendments add control and performance demonstration requirements. They do not modify existing responsibilities or create new responsibilities among EPA Regional offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to the proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on these proposed amendments from State and local officials.

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

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed amendments do not have tribal implications, as specified in Executive Order 13175. They would 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. The proposed amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to the proposed amendments.

EPA specifically solicits additional comment on these proposed amendments from tribal officials.

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

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 the Agency.

The proposed rule is not subject to the Executive Order because they are not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

The proposed amendments are not a ''significant energy action'' as defined in Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed amendments are not likely to have any adverse energy effects because they result in overall savings due to product recovery.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. 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 decides not to use available and applicable VCS.

This proposed rule involves technical standards. EPA cites the following methods in this rule: EPA Method 8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference—see 40 CFR 63.14), for analysis of water samples taken from cooling tower return lines; 40 CFR 61.355(c)(3) of the National Emission Standards for Benzene Waste Operations for water sample collection; and 40 CFR part 63, appendix C, for the fraction biodegradation of benzene in EBU. This proposed rule also cites the following VCS: Method 5210, Biochemical Oxygen Demand (BOD), for measuring BOD_5 (for 5-day BOD), Method 5220, Chemical Oxygen Demand (COD), for measuring COD, and Method 2540E, Fixed and Volatile Solids Ignited at 500 degrees C, for measuring MLVSS concentration, all in Standard Methods for the Examination of Water and Wastewater (incorporated by reference—see 40 CFR 63.14).

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to the methods cited in this proposed rule. One VCS was found that could potentially be applicable to this rule in lieu of Standard Method 5220, Chemical Oxygen Demand (COD), for measuring COD. This potential standard is ASTM D1252–06, Standard Test Methods for Chemical Oxygen Demand (Dichromate Oxygen Demand) of Water. The EPA requests comments on whether this standard should be reviewed for relevancy to today's proposed rule. Based on the comments received, the EPA will review this method for inclusion in the final rule. No VCS were found for the other methods cited in this rule.

For the methods required or referenced by these proposed amendments, 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 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions. In general, EPA welcomes comments on this aspect of the proposed amendments and, specifically, invites the public to identify other potentially-applicable VCS and to explain why such standards should be used in this regulation.

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

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

EPA has determined that these proposed amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These proposed amendments add new control requirements to established national standards for petroleum refineries.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 21, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

Option 1 for § 63.14

2. Section 63.14 is amended by adding paragraph (k)(1)(iv) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(k) * * *

(1) * * *

(iv) Method 8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2 (and subsequent revisions), dated December 1996 and in Update III, IBR approved for § 63.654(a)(1) and (b) of Subpart CC of this part.

* * * * *

Option 2 for § 63.14

3. Section 63.14 is amended by adding paragraphs (k)(1)(iv) and (l) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(k) * * *

(1) * * *

(iv) Method 8260B, Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 2 (and subsequent revisions), dated December 1996 and in Update III, IBR approved for § 63.654(a)(1) and (b) of Subpart CC of this part.

* * * * *

(l) The following material is available from the American Public Health Association, 1015 15th Street, NW.,

Washington, DC 20005 or at *http://www.standardmethods.org:*

(1) The following methods as published in Standard Methods for the Examination of Water and Wastewater, A.D. Eaton (ed.), *et al.*, 21st Edition (and subsequent editions), dated 2005:

(i) Method 2540E, Solids, dated 1997, IBR approved for § 63.647(d)(5) of Subpart CC of this part.

(ii) Method 5210, Biochemical Oxygen Demand (BOD), dated 2001, IBR approved for § 63.647(d)(6) of Subpart CC of this part.

(iii) Method 5220, Chemical Oxygen Demand (COD), dated 1997, IBR approved for § 63.647(d)(6) of Subpart CC of this part.

(2) [Reserved]

Subpart CC—[Amended]

Option 1 for § 63.640

4. Section 63.640 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (c) introductory text;

c. Revising paragraphs (c)(6) and (7);

d. Adding paragraph (c)(8);

e. Revising paragraph (h) introductory text;

f. Adding paragraph (h)(6);

g. Revising the first sentence in paragraph (l) introductory text and the first sentence in paragraph (l)(3) introductory text; and

h. Adding paragraph (s).

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(5) through (8) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(c) For the purposes of this subpart, the affected source shall comprise all emissions points, in combination, listed in paragraphs (c)(1) through (8) of this section that are located at a single refinery plant site.

* * * * *

(6) All marine vessel loading operations located at a refinery meeting the criteria in paragraph (a) of this section and the applicability criteria of subpart Y, § 63.560;

(7) All storage vessels and equipment leaks associated with a bulk gasoline terminal or pipeline classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a refinery meeting the criteria in paragraph (a) of this section; and

(8) All cooling tower systems associated with petroleum refining process units meeting the criteria in paragraph (a) of this section and which meets the criteria in either paragraph (a)(8)(i) or (a)(8)(ii) of this section:

(i) The cooling tower system provides non-contact cooling water to any heat exchanger in Table 1 HAP service.

(ii) The cooling tower system receives cooling water from multiple heat exchangers which serve different petroleum refinery process units and any of the heat exchangers are in Table 1 HAP service.

* * * * *

(h) Except as provided in paragraphs (k), (l), or (m) of this section, sources subject to this subpart are required to achieve compliance on or before the dates specified in paragraphs (h)(1) through (6) of this section.

* * * * *

(6) Cooling tower systems that are part of an existing source shall be in compliance with § 63.654 no later than 3 years and 90 days after the date of publication of the final amendments in the **Federal Register**.

* * * * *

(l) If an additional petroleum refining process unit is added to a plant site or if a miscellaneous process vent, storage vessel, gasoline loading rack, marine tank vessel loading operation, or cooling tower system that meets the criteria in paragraphs (c)(1) through (8) of this section is added to an existing petroleum refinery or if another deliberate operational process change creating an additional Group 1 emissions point(s) (as defined in § 63.641) is made to an existing petroleum refining process unit, and if the addition or process change is not subject to the new source requirements as determined according to paragraphs (i) or (j) of this section, the requirements in paragraphs (l)(1) through (3) of this section shall apply. * * *

* * * * *

(3) The owner or operator of a petroleum refining process unit or of a storage vessel, miscellaneous process vent, wastewater stream, gasoline loading rack, marine tank vessel loading operation, or cooling tower system meeting the criteria in paragraphs (c)(1) through (8) of this section that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements that are applicable to existing sources including, but not limited to, the reports listed in paragraphs (l)(3)(i) through (vii) of this section. * * *

* * * * *

(s) Overlap of subpart CC with other regulations for cooling tower systems. After the compliance date specified in paragraph (h) of this section, the owner or operator of a cooling tower system that is also subject to another subpart in this part (e.g., subpart F, YY, FFFF) is exempt from the monitoring requirements in § 63.654(a) through (d).

Option 2 for § 63.640

5. Section 63.640 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (c) introductory text;

c. Revising paragraphs (c)(6) and (7);

d. Adding paragraph (c)(8);

e. Revising paragraph (h) introductory text;

f. Adding paragraphs (h)(6) through (8);

g. Revising the first sentence in paragraph (l) introductory text and the first sentence in paragraph (l)(3) introductory text; and

h. Adding paragraph (s).

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(5) through (8) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(c) For the purposes of this subpart, the affected source shall comprise all emissions points, in combination, listed in paragraphs (c)(1) through (8) of this section that are located at a single refinery plant site.

* * * * *

(6) All marine vessel loading operations located at a refinery meeting the criteria in paragraph (a) of this section and the applicability criteria of subpart Y, § 63.560;

(7) All storage vessels and equipment leaks associated with a bulk gasoline terminal or pipeline classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a refinery meeting the criteria in paragraph (a) of this section; and

(8) All cooling tower systems associated with petroleum refining process units meeting the criteria in paragraph (a) of the section and which meets the criteria in either paragraph (a)(8)(i) or paragraph (a)(8)(ii) of this section:

(i) The cooling tower system provides non-contact cooling water to any heat exchanger in Table 1 HAP service.

(ii) The cooling tower system receives cooling water from multiple heat

exchangers which serve different petroleum refinery process units and any of the heat exchangers are in Table 1 HAP service.

* * * * *

(h) Except as provided in paragraphs (k), (l), or (m) of this section, sources subject to this subpart are required to achieve compliance on or before the dates specified in paragraphs (h)(1) through (8) of this section.

* * * * *

(6) Group 1 storage vessels that are part of an existing source shall be in compliance with § 63.646(c) and (e) no later than 3 years and 90 days after the date of publication of the final amendments in the **Federal Register**.

(7) Group 1 wastewater streams that are part of an existing source shall be in compliance with § 63.647(d) no later than 3 years and 90 days after the date of publication of the final amendments in the **Federal Register**.

(8) Cooling tower systems that are part of an existing source shall be in compliance with § 63.654 no later than 3 years and 90 days after the date of publication of the final amendments in the **Federal Register**.

* * * * *

(l) If an additional petroleum refining process unit is added to a plant site or if a miscellaneous process vent, storage vessel, gasoline loading rack, marine tank vessel loading operation, or cooling tower system that meets the criteria in paragraphs (c)(1) through (8) of this section is added to an existing petroleum refinery or if another deliberate operational process change creating an additional Group 1 emissions point(s) (as defined in § 63.641) is made to an existing petroleum refining process unit, and if the addition or process change is not subject to the new source requirements as determined according to paragraph (i) or paragraph (j) of this section, the requirements in paragraphs (l)(1) through (3) of this section shall apply.

* * *

* * * * *

(3) The owner or operator of a petroleum refining process unit or of a storage vessel, miscellaneous process vent, wastewater stream, gasoline loading rack, marine tank vessel loading operation, or cooling tower system meeting the criteria in paragraphs (c)(1) through (8) of this section that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements that are applicable to existing sources, including, but not limited to, the reports listed in paragraphs (l)(3)(i) through (vii) of this section. * * *

* * * * *

(s) Overlap of subpart CC with other regulations for cooling tower systems. After the compliance date specified in paragraph (h) of this section, the owner or operator of a cooling tower system that is also subject to another subpart in this part (e.g., subpart F, YY, FFFF) is exempt from the monitoring requirements in § 63.654(a) through (d).

6. Section 63.641 is amended by adding, in alphabetical order, definitions for ''Cooling tower system,'' ''Cooling water return lines,'' and ''Point of measurement for leak determination,'' to read as follows:

§ 63.641 Definitions.

* * * * *

Cooling tower system means a closed loop recirculation system or a once through system.

Cooling water return lines means the main water trunk lines at the inlet to the cooling tower before exposure to the atmosphere.

* * * * *

Point of measurement for leak determination means any location in the cooling water return line or lines prior to exposure of the cooling water to the atmosphere.

* * * * *

Option 2 for § 63.646; Option 1 would not revise § 63.646

7. Section 63.646 is amended by revising paragraphs (c) and (e) to read as follows:

§ 63.646 Storage vessel provisions.

* * * * *

(c) On and after the compliance date specified in § 63.640(h)(6), the owner or operator of a storage vessel that is equipped with an external floating roof and that is part of an existing source shall comply with the requirements for slotted guide poles in § 63.119(c)(2)(ix) and (x). The following requirements do not apply to storage vessels at existing sources subject to this subpart: §§ 63.119(b)(5); (b)(6); (c)(2)(i) through (viii), (xi), and (xii); and (d)(2).

* * * * *

(e) On and after the compliance date in § 63.640(h)(6), when complying with the inspection requirements of § 63.120(b) of subpart G, owners and operators of a storage vessel that is equipped with an external floating roof and that is part of an existing source shall comply with the provisions of § 63.120(b)(10) and (b)(10)(i) for slotted guide poles as described in paragraph (e)(1) and (2) of this section. The owner or operator is not required to comply with the requirements for slotted membranes.

(1) As part of the inspection required in § 63.120(b)(10), the owner or operator shall visually check the gasketed cover or flexible fabric sleeve seal and gasketed float or other device for each slotted guide pole.

(2) If the external floating roof has defects; the primary seal has holes, tear, or other openings in the seal or the seal fabric; or the secondary seal has holes, tears, or other openings in the seal or seal fabric; or the gaskets (including a gasketed cover or gasketed float for a slotted guide pole) no longer close off the liquid surface from the atmosphere; or the flexible fabric sleeve seal for a slotted guide pole has holes, tears, or other openings in the seal or seal fabric; or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the storage vessel with organic HAP.

* * * * *

Option 2 for § 63.647; Option 1 Would Not Revise § 63.647

8. Section 63.647 is amended by adding paragraph (d) to read as follows:

§ 63.647 Wastewater provisions.

* * * * *

(d) On and after the compliance date specified in § 63.640(h)(7), the owner or operator of an enhanced biodegradation unit (EBU) that receives a Group 1 wastewater stream from a petroleum refinery shall comply with the requirements in paragraphs (d)(1) through (6) of this section. The provisions in § 61.348(b)(2)(ii)(B) for the recommended range for the food-to-microorganism ratio, the mixed liquor suspended solids concentration, and residence time do not apply, and the requirements in §§ 61.348(b)(2)(i), 61.354(b)(2), and 61.355(k)(4)(i) for monitoring the benzene concentration at the inlet to the EBU and maintaining it below 10 parts per million by weight (ppmw) do not apply.

(1) The fraction biodegraded of benzene in each EBU shall be 90 percent or greater.

(2) The mixed liquor volatile suspended solids (MLVSS) concentration shall not fall below the operating limit established during the initial performance test.

(3) The food-to-microorganism ratio shall not exceed the operating limit established during the initial performance test.

(i) Food can be measured as either grams per liter (g/l) of 5-day biological oxygen demand (BOD_5) or g/l of chemical oxygen demand (COD), but you must use the same measure used to develop your operating limit.

(ii) Determine the food-to-microorganism ratio operating limit using Equation 1 of this section:

$$\text{Food-to-microorganism ratio} = \frac{BOD_5 \times Q_{in}}{[MLVSS] \times V_{EBU}} \quad \text{(Eq. 1)}$$

Where:

BOD_5 = 5-day biological oxygen demand or chemical oxygen demand of EBU influent wastewater (g/l = kg/m^3);

Q_{in} = Influent wastewater volumetric flow rate to the EBU (m^3/day);

[MLVSS] = Concentration of mixed liquor volatile suspended solids (g/l = kg/m^3); and

V_{EBU} = Average volume of wastewater in the EBU during normal process operations (m^3).

(4) The owner or operator shall conduct an initial performance test to demonstrate compliance with the treatment efficiency standard of each EBU using the following procedures:

(i) Determine the fraction biodegraded of benzene as determined according to the procedures in appendix C to part 63 (Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit).

(ii) Use the multiple zone concentration method with separate ''inlet'' zones for each inlet location containing an applicable benzene waste stream. The inlet zone is defined as the depth of the EBU times the 100 square foot area surrounding each benzene wastewater inlet.

(iii) The remainder of the EBU may be modeled as a single zone or multiple zones depending on the mixing zones present in the EBU as described in appendix C to part 63.

(iv) The volume-weighted average MLVSS concentration used in the multiple zone F_{bio} test must be used as the operating limit for MLVSS. The volume-weighted average food-to-microorganism ratio used in the multiple zone F_{bio} test must be used as the operating limit for the food-to-microorganism ratio.

(5) Measure the MLVSS in the EBU no less frequently than once per week using Method 2540 (incorporated by reference—see § 63.14); and

(6) Measure the EBU influent biological oxygen demand (BOD) using Method 5210 (incorporated by reference—see § 63.14) or the COD MLVSS using Method 5220 (incorporated by reference—see § 63.14) in the EBU no less frequently than once per week. Calculate the food-to-microorganism ratio once a week using Equation 1 of this section and record the results.

9. Section 63.650 is amended by revising paragraph (a) to read as follows.

§ 63.650 Gasoline loading rack provisions.

(a) Except as provided in paragraphs (b) through (c) of this section, each owner or operator of a Group 1 gasoline loading rack classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a petroleum refinery shall comply with subpart R, §§ 63.421, 63.422(a) through (c), 63.425(a) through (c), 63.425(e) through (h), 63.427(a) and (b), and 63.428(b), (c), (g)(1), and (h)(1) through (3).

* * * * *

§§ 63.654 and 63.655 [Redesignated as §§ 63.655 and 63.656]

10. Sections 63.654 and 63.655 are redesignated as §§ 63.655 and 63.656.

11. In the table below, for each section indicated in the left column, in the paragraph listed in the second column, remove the reference indicated in the third column from wherever it appears, and add the reference indicated in the fourth column:

Section	Paragraph	Remove	Add
§ 63.640	(b)(2)	§ 63.654(h)(6)(i)	§ 63.655(h)(6)(i).
§ 63.640	(e)(2)(iii)	§ 63.654(h)(6)(ii)	§ 63.655(h)(6)(ii).
§ 63.640	(f)(5)	§ 63.654(h)(6)(iii)	§ 63.655(h)(6)(iii).
§ 63.640	(k)(2)(ii)	§ 63.654(f)	§ 63.655(f).
§ 63.640	(k)(2)(iii)	§ 63.654(g) and (h)	§ 63.655(g) and (h).
§ 63.640	(l) introductory text	§ 63.654(f)	§ 63.655(f).
§ 63.640	(l)(3)(i)	§ 63.654(f)	§ 63.655(f).
§ 63.640	(l)(3)(ii)	§ 63.654(g) and (h)	§ 63.655(g) and (h).
§ 63.641	Definition of ''Continuous record''	§ 63.654(i)	§ 63.655(i).
§ 63.642	(k)(1)	§ 63.654	§ 63.655.
§ 63.642	(l)(2)	§ 63.654	§ 63.655.
§ 63.644	(b) introductory text	§ 63.654(h)	§ 63.655(h).
§ 63.644	(c)(1)	§ 63.654(h) and (i)	§ 63.655(h) and (i).
§ 63.644	(d)	§ 63.654(f)(3)	§ 63.655(f)(3).
§ 63.644	(e)	§ 63.654(g)(6)	§ 63.655(g)(6).
§ 63.645	(h)(2)	§ 63.654(f), (g), or (h)	§ 63.655(f), (g), or (h).
§ 63.646	(j)	§ 63.654(f)	§ 63.655(f).
§ 63.646	(k)	§ 63.654(g)	§ 63.655(g).
§ 63.652	(e)(5)	§ 63.654(g)(8) and § 63.654(g)(8)(iii)	§ 63.655(g)(8) and § 63.655(g)(8)(iii).
§ 63.652	(f)(3)	§ 63.654(g)(6)(i)	§ 63.655(g)(6)(i).
§ 63.652	(l)(1)	§ 63.654(g)(6)	§ 63.655(g)(6).
§ 63.653	(a)(7)	§ 63.654(h)(4)	§ 63.655(h)(4).
§ 63.653	(b)	§ 63.654	§ 63.655.
§ 63.653	(c)	§ 63.654	§ 63.655.
§ 63.653	(d) introductory text	§ 63.654(g) and (h)	§ 63.655(g) and (h).
§ 63.653	(d)(2)(vii)	§ 63.654(h)(4)	§ 63.655(h)(4).
§ 63.653	(d)(2)(viii)(G)	§ 63.654(h)(4)	§ 63.655(h)(4).

Option 1 for § 63.654

12. Section 63.654 is added to read as follows:

§ 63.654 Cooling tower systems.

(a) On and after the compliance date specified in § 63.650(h)(8), the owner or operator of an existing source shall monitor each cooling tower system subject to this subpart to detect and repair leaks of organic HAP into the cooling water. The owner or operator may elect to monitor the total organic HAP listed in Table 1 of this subpart on a quarterly basis according to the requirements in paragraphs (a)(1) of this section or monitor chemical usage or other surrogates according to the requirements in paragraph (a)(2) of this section.

(1) The owner or operator shall conduct quarterly monitoring of total organic HAP listed in Table 1 of this subpart according to the methods and procedures in paragraphs (a)(1)(i) through (iii) of this section.

(i) Collect a water sample from each cooler water return line(s) prior to air stripping or exposure to air. You must collect each sample using the sampling procedures in § 61.355(c)(3) of the National Emission Standard for Benzene Waste Operations.

(ii) Analyze each sample using EPA Method 8260B (incorporated by reference—see § 63.14). Determine the total organic HAP concentration as the sum of the individual HAP concentrations of the HAP listed in Table 1 of this subpart.

(iii) If the total organic HAP concentration exceeds 1 part per million by weight (ppmw), a leak is detected.

(2) The owner or operator shall monitor chlorine or bromine usage at least once each day, free chlorine at least twice each day, oxidation reduction potential (ORP) at least six times per day, hydrocarbons (using an online analyzer) at least twice each day, or volatile organic compounds (VOC) El Paso at least once each month according to the procedures in paragraphs (a)(2)(i) through (iii) of this section.

(i) Conduct an initial analysis of the cooling water using EPA Method 8260B (incorporated by reference—see § 63.14) to demonstrate that the total organic HAP concentration is less than 1 ppmw.

(ii) Establish operating limits for the parameters to be monitored. You must identify the parameters to be monitored and the established operating limits in your Notification of Compliance Status and written monitoring plan.

(iii) If the monitored operating parameter exceeds the operating limit, you must sample the cooling water to determine the total organic HAP concentration. If the total organic HAP concentration exceeds 1 ppmw, a leak is detected.

(b) On and after the compliance date specified in § 63.650(h)(8), the owner or operator of a new source shall monitor the concentration of HAP from each cooling tower system subject to this subpart on a quarterly basis to identify and repair any leak with a potential mass leak rate of 10 pounds per day (lb/day) or greater of any single HAP listed in Table 1 of this subpart or 100 lb/day or greater of total HAP listed in Table 1 of this subpart. A heat exchange system may consist of an entire heat exchange system or a combination of heat exchangers such that, based on the rate of cooling water and the sensitivity of the test method, a leak of 10 lb/day or greater of any single HAP listed in Table 1 of this subpart or 100 lb/day or greater of total HAP would be detected. The owner or operator shall conduct the quarterly monitoring according to the methods and procedures in paragraphs (a)(1) through (4) of this section.

(1) Collect a water sample from each cooler water return line(s) prior to air stripping or exposure to air. You must collect each sample using the sampling procedures in § 61.355(c)(3) of the National Emission Standard for Benzene Waste Operations.

(2) Analyze each sample using EPA Method 8260B (incorporated by reference—see § 63.14). Determine the total HAP concentration as the sum of the individual HAP concentrations of the HAP listed in Table 1 of this subpart.

(3) Calculate and record the potential mass leak rate using Equation 1 of this section:

$$L = 0.012\ C_{HAP} Q_{CT} \qquad \text{(Eq. 1)}$$

Where:

L = Potential mass leak rate of HAP (lb/day);
0.012 = Constant for unit conversion (lb/gallon × minutes/day × part per million parts);
C_{HAP} = Concentration of individual or total organic HAP in the cooling tower water prior to exposure to the air (ppmw); and
Q_{CT} = Volumetric flow rate of cooling water to the cooling tower (gallons per minute).

(4) If the results of Equation 1 of this section indicate a leak with a mass leak rate of 10 lb/day of any single HAP or 100 lb/day of total HAP per day or greater, a leak is detected.

(c) If a leak is detected, the owner or operator must identify the source of the leak as soon as practicable, but no later than 30 days after receiving the sampling results that indicate the presence of a leak.

(d) Except for a delay allowed under paragraph (e) of this section, the owner or operator must repair any leak as soon as practicable, but no later 30 days after identifying the source of leak. Repairs may include:

(1) Physical repairs to the leaking heat exchanger;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid; or

(4) Replacing the heat exchanger.

(e) The owner or operator may delay the repair of a leak if the conditions in paragraph (e)(1) or paragraph (e)(2) of this section are met.

(1) Repairing the leak would require the process unit served by the leaking heat exchanger to be shut down, and a shutdown for repair would cause greater emissions than the potential emissions from the cooling tower from the time the leaking exchanger was first identified and the next planned shutdown.

(i) The facility must use the startup and shutdown emissions estimates in the cooling tower monitoring plan required by paragraph (f) of this section for the estimate of total organic HAP emissions for the process unit serviced by the leaking heat exchanger.

(ii) The owner or operator must conduct monthly monitoring of the total organic HAP concentration using EPA Method 8260B (incorporated by reference—see § 63.14).

(iii) The owner or operator shall recalculate the potential air emissions from the cooling tower using the new sampling results and the time period between the most recent sampling results and the next planned shutdown. If the potential air emissions from the cooling tower exceed the startup and shutdown emission estimates for any month, the owner or operator must repair the heat exchanger within 30 days of receiving the sampling results that voided the delay of repair; or

(2) The necessary parts are not reasonably available, in which case the owner or operator must complete the repair as soon as practicable upon receiving the necessary parts, but no later than 120 days after identifying the leaking exchanger. The owner or operator can not further delay the repair when a sampling result voids the delay of repair under paragraph (e)(1)(iii) of this section.

(f) The owner or operator shall prepare, implement, and maintain onsite at all times a cooling tower monitoring plan that includes the information specified in paragraphs (f)(1) through (11) of this section.

(1) Identification of all cooling tower systems at the facility;

(2) Identification of the cooling tower systems subject to this subpart;

(3) Identification of the cooling tower systems receiving cooling water from a heat exchanger that are exempt from this subpart according to § 63.640(s);

(4) Identification of the heat exchanger(s) and process unit(s) serviced by each cooling tower system that is subject to this subpart;

(5) The HAP concentration of the process fluids in each heat exchanger serviced by a cooling tower system subject to this subpart;

(6) The surrogate parameters to be monitored, the monitoring frequency, and parameter operating limits for each cooling tower system subject to this subpart;

(7) The methods used to identify the leaking heat exchanger once a leak is detected;

(8) Standard repair procedures that reduce emissions from leaks;

(9) Procedures for reporting leaks into the cooling water system;

(10) List of critical spare parts that must be maintained in inventory;

(11) Engineering estimates of startup and shutdown organic HAP emissions for each process unit serviced by a cooling tower subject to this subpart.

Option 2 for § 63.654

13. Section 63.654 is added to read as follows:

§ 63.654 Cooling tower systems.

(a) On and after the compliance date specified in § 63.650(h)(8), the owner or operator of a new or existing source shall monitor the concentration of HAP from each cooling tower system subject to this subpart on a monthly basis to identify and repair any leak with a potential mass leak rate of 10 pounds per day (lb/day) or greater of any single HAP listed in Table 1 of this subpart or 100 lb/day or greater of total HAP listed in Table 1 of this subpart. A heat exchange system may consist of an entire heat exchange system or a combination of heat exchangers such that, based on the rate of cooling water and the sensitivity of the test method, a leak of 10 lb/day or greater of any single HAP listed in Table 1 of this subpart or 100 lb/day or greater of total HAP would be detected. The owner or operator shall conduct the monthly monitoring according to the methods and procedures in paragraphs (a)(1) through (3) of this section.

(1) Collect a water sample from each cooler water return line(s) prior to air stripping or exposure to air. You must collect each sample using the sampling procedures in § 61.355(c)(3) of the National Emission Standard for Benzene Waste Operations.

(2) Analyze each sample using EPA Method 8260B (incorporated by reference—see § 63.14). Determine the total organic HAP concentration as the sum of the individual HAP concentrations of the HAP listed in Table 1 of this subpart.

(3) Calculate and record the potential mass leak rate using Equation 1 of this section:

$$L = 0.012\ C_{HAP} Q_{CT} \qquad \text{(Eq. 1)}$$

Where:

L = Potential mass leak rate of HAP (lb/day);

0.012 = Constant for unit conversion (lb/gallon × minutes/day × part per million parts);

C_{HAP} = Concentration of individual or total organic HAP in the cooling tower water prior to exposure to the air (ppmw); and

Q_{CT} = Volumetric flow rate of cooling water to the cooling tower (gallons per minute).

(b) If the results of Equation 1 of this section indicate a leak with a mass leak rate of 10 lb/day of any single HAP or 100 lb/day of total HAP per day or greater, the owner or operator must identify the source of the leak as soon as practicable, but no later than 30 days after receiving the sampling results that indicate the presence of a leak.

(c) Except for a delay allowed under paragraph (d) of this section, the owner or operator must repair any leak with a mass leak rate of 10 pounds of any single Table 1 HAP or 100 pounds of total Table 1 HAP per day or greater as soon as practicable, but no later than 30 days after identifying the source of leak. Repairs may include:

(1) Physical repairs to the leaking heat exchanger;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid; or

(4) Replacing the heat exchanger.

(d) The owner or operator may delay the repair of a leak if the conditions in paragraph (d)(1) or paragraph (d)(2) of this section are met.

(1) Repairing the leak would require the process unit served by the leaking heat exchanger to be shut down, and a shutdown for repair would cause greater emissions than the potential emissions from the cooling tower from the time the leaking exchanger was first identified and the next planned shutdown.

(i) The facility must use the startup and shutdown emissions estimates in the cooling tower monitoring plan required by paragraph (e) of this section for the estimate of HAP emissions for the process unit serviced by the leaking heat exchanger.

(ii) The owner or operator must continue monthly monitoring of HAP as required by paragraph (a) of this section.

(iii) The owner or operator shall recalculate the potential air emissions from the cooling tower using the new sampling results and the time period between the most recent sampling results and the next planned shutdown. If the potential air emissions from the cooling tower exceed the startup and shutdown emission estimates for any month, the owner or operator must repair the heat exchanger within 30 days of receiving the sampling results that voided the delay of repair; or

(2) The necessary parts are not reasonably available, in which case the owner or operator must complete the repair as soon as practicable upon receiving the necessary parts, but no later than 120 days after identifying the leaking exchanger. The owner or operator cannot further delay the repair when a sampling result voids the delay of repair under paragraph (d)(1)(iii) of this section.

(e) The owner or operator shall prepare, implement, and maintain onsite at all times a cooling tower monitoring plan that includes the information specified in paragraphs (e)(1) through (10) of this section.

(1) Identification of all cooling tower systems at the facility;

(2) Identification of the cooling tower systems subject to this subpart;

(3) Identification of the cooling tower systems receiving cooling water from a heat exchanger that are exempt from this subpart according to § 63.640(s);

(4) Identification of the heat exchanger(s) and process unit(s) serviced by each cooling tower system that is subject to this subpart;

(5) The HAP concentration of the process fluids in each heat exchanger serviced by a cooling tower system subject to this subpart;

(6) The methods used to identify the leaking heat exchanger once a leak is detected;

(7) Standard repair procedures that reduce emissions from leaks;

(8) Procedures for reporting leaks into the cooling water system;

(9) List of critical spare parts that must be maintained in inventory;

(10) Engineering estimates of startup and shutdown HAP emissions for each process unit serviced by a cooling tower subject to this subpart.

Option 1 for § 63.655

14. Newly redesignated § 63.655 is amended by:

a. Revising paragraph (f)(1) introductory text, and adding paragraph (f)(1)(vi);

b. Revising paragraph (g) introductory text and adding paragraph (g)(9);

c. Amend paragraph (i)(1)(ii) by removing ''§ 63.654(e)'' and by inserting, in its place, ''§ 63.655(e)''.

d. Redesignating existing paragraph (i)(4) as (i)(5); and

e. Adding paragraph (i)(4).

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) * * *

(1) The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

(vi) For each cooling tower system, identification of the cooling tower systems that are subject to the requirements of this subpart and cooling tower systems that are exempt from the requirements of this subpart.

* * * * *

(g) The owner or operator of a source subject to this subpart shall submit Periodic Reports no later than 60 days after the end of each 6-month period when any of the compliance exceptions specified in paragraphs (g)(1) through (6) of this section or paragraph (g)(9) of this section occur. The first 6-month period shall begin on the date the Notification of Compliance Status report is required to be submitted. A Periodic Report is not required if none of the compliance exceptions identified in paragraphs (g)(1) through (6) of this section or paragraph (g)(9) of this section occurred during the 6-month period unless emissions averaging is utilized. Quarterly reports must be submitted for emission points included in emission averages, as provided in paragraph (g)(8) of this section. An owner or operator may submit reports required by other regulations in place of or as part of the Periodic Report required by this paragraph if the reports contain the information required by paragraphs (g)(1) through (9) of this section.

* * * * *

(9) For cooling tower systems, Periodic Reports must include the following information:

(i) A summary of the leak monitoring data, including the number of leaks determined to be equal to or greater than 10 lbs/day of any one HAP or 100 lb/day of total HAP;

(ii) If applicable, the date a leak was identified, the date the source of the leak was identified, and the date of repair.

(iii) If applicable, a summary of the reason for delayed repair of any leak and the date of repair.

* * * * *

(i) * * *

(4) The owner or operator of a cooling tower system subject to the monitoring requirements in § 63.654 shall comply with the recordkeeping requirements in paragraphs (i)(4)(i) through (iii) of this section.

(i) HAP analytical results.

(ii) The date when a leak was identified by sampling results, the date when the heat exchanger leak source was identified, and the date when the leak source was repaired or taken out of service.

(iii) If a repair is delayed, the reason for the delay. If the daily is based on startup and shutdown emissions, the initial and monthly calculations of the potential cooling tower emissions and the date of the next planned shutdown.

* * * * *

Option 2 for § 63.655

15. Newly redesignated § 63.655 is amended by:

a. Revising paragraph (f)(1) introductory text, revising paragraph (f)(1)(i)(A)(*1*), and adding paragraphs (f)(1)(vi) and (vii);

b. Revising paragraphs (g) introductory text, (g)(1), and (g)(3)(iii)(A) and adding paragraphs (g)(9) and (g)(10);

c. Amend paragraph (i)(1)(ii) by removing ''§ 63.654(e)'' and by inserting, in its place, ''§ 63.655(e)''.

d. Redesignating existing paragraph (i)(4) as (i)(5); and

e. Adding paragraph (i)(4).

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) * * *

(1) The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1)(i) through (f)(1)(vi) of this section.

(i) * * *

(A) * * *

(*1*) For each Group 1 storage vessel complying with § 63.646 that is not included in an emissions average, the method of compliance (i.e., internal floating roof, external floating roof, or closed vent system and control device) and for each Group 1 storage vessel that is equipped with an external floating roof and that is part of an existing source, the method of compliance with the requirements for slotted guidepoles (i.e., gasketed cover or sleeveless seal and gasketed float or other device).

* * * * *

(vi) For each cooling tower system, identification of the cooling tower systems that are subject to the requirements of this subpart and cooling tower systems that are exempt from the requirements of this subpart.

(vii) For each EBU, identification of the operating limits for the mixed liquor volatile suspended solids concentration and food-to-microorganism ratio established during the performance test and a full copy of the performance test report.

(g) The owner or operator of a source subject to this subpart shall submit Periodic Reports no later than 60 days after the end of each 6-month period when any of the compliance exceptions specified in paragraphs (g)(1) through (6) of this section or paragraph (g)(9) of this section occur. The first 6-month period shall begin on the date the Notification of Compliance Status report is required to be submitted. A Periodic Report is not required if none of the compliance exceptions identified in paragraph (g)(1) through (6) of this section or paragraph (g)(9) of this section occurred during the 6-month period unless emissions averaging is utilized. Quarterly reports must be submitted for emission points included in emission averages, as provided in paragraph (g)(8) of this section. An owner or operator may submit reports required by other regulations in place of or as part of the Periodic Report required by this paragraph if the reports contain the information required by paragraphs (g)(1) through (9) of this section.

(1) For storage vessels, Periodic Reports shall include the information specified for Periodic Reports in paragraphs (g)(2) through (5) of this section except that information related to gaskets, slotted membranes, and sleeve seals is not required for a storage vessel that is part of an existing source and that is equipped with a fixed roof and an internal floating roof or an external floating roof converted to an internal floating roof. Information related to gaskets and sleeve seals for slotted guide poles is required for a storage vessel that is part of an existing source and that is equipped with an external floating roof.

* * * * *

(3) * * *

(iii) * * *

(A) A failure is defined as any time in which the external floating roof has defects; or the primary seal has holes or other openings in the seal or the seal fabric; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets (including a gasketed cover or gasketed float for a slotted guide pole) no longer closes off the liquid surface from the atmosphere; or a flexible fabric sleeve seal for a slotted guide pole has holes or other openings or, for a new source, the

gaskets no longer close off the liquid surface from the atmosphere; or, for a storage vessel that is part of a new source, the slotted membrane has more than 10 percent open area.

* * * * *

(9) For cooling tower systems, Periodic Reports must include the following information:

(i) A summary of the leak monitoring data, including the number of leaks determined to be equal to or greater than 10 lbs/day of any one HAP or 100 lbs/day of total HAP;

(ii) If applicable, the date a leak was identified, the date the source of the leak was identified, and the date of repair.

(iii) If applicable, a summary of the reason for delayed repair of any leak and the date of repair.

(10) For EBU, the periodic report must clearly identify any excursion from the operating limit for the concentration of mixed liquor volatile suspended solids or the food-to-microorganism ratio established in the initial performance test.

* * * * *

(i) * * *

(4) The owner or operator of a cooling tower system subject to the monitoring requirements in § 63.654 shall comply with the recordkeeping requirements in paragraphs (i)(4)(i) through (iii) of this section.

(i) HAP analytical results.

(ii) The date when a leak was identified by sampling results, the date when the heat exchanger leak source was identified, and the date when the leak source was repaired or taken out of service.

(iii) If a repair is delayed, the reason for the delay. If the delay is based on startup and shutdown emissions, the initial and monthly calculations of the potential cooling tower emissions and the date of the next planned shutdown.

* * * * *

Appendix to Subpart CC of Part 63 [Amended]

16. Table 6 of the appendix to subpart CC of part 63 is amended by:

a. Revising Reference § 63.6(b)(5);

b. Revising Reference §§ 63.7(a)(2), 63.7(g), and 63.7(h)(3);

c. Revising Reference §§ 63.8(c)(1)(ii), 63.8(c)(4), 63.8(f)(4)(i), and 63.8(g);

d. Revising Reference §§ 63.9(b)(1)(i), 63.9(b)(4), and 63.9(b)(5); and

e. Revising Reference §§ 63.10(d)(2) and 63.10(d)(5)(i) to read as follows:

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[A]

Reference	Applies to subpart CC	Comment
* * *	* * *	* * *
63.6(b)(5)	No	§ 63.655(d) of subpart CC includes notification requirements.
* * *	* * *	* * *
63.7(a)(2)	No	Test results must be submitted in the Notification of Compliance Status report due 150 days after compliance date, as specified in § 63.655(d) of subpart CC.
* * *	* * *	* * *
63.7(g)	No	Performance test reporting specified in § 63.655(d).
* * *	* * *	* * *
63.7(h)(3)	Yes	Yes, except site-specific test plans shall not be required, and where § 63.7(g)(3) specifies submittal by the date the site-specific test plan is due, the date shall be 90 days prior to the Notification of Compliance Status report in § 63.655(d).
* * *	* * *	* * *
63.8(c)(1)(ii)	No	Addressed by periodic reports in § 63.655(e) of subpart CC.
* * *	* * *	* * *
63.8(c)(4)	No	Subpart CC specifies monitoring frequency in § 63.641 and § 63.655(g)(3) of subpart CC.
* * *	* * *	* * *
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.655(f)(4) of subpart CC.
* * *	* * *	* * *
63.8(g)	No	Subpart CC specifies data reduction procedures in § 63.655(h)(3).
* * *	* * *	* * *
63.9(b)(1)(i)	No	Specified in § 63.655(d)(2) of subpart CC.
* * *	* * *	* * *
63.9(b)(4)	Yes	Except that the notification in § 63.9(b)(4)(i) shall be submitted at the time specified in § 63.655(d)(2) of subpart CC.
63.9(b)(5)	Yes	Except that the notification in § 63.9(b)(5) shall be submitted at the time specified in § 63.655(d)(2) of subpart CC.
* * *	* * *	* * *
63.10(d)(2)	No	§ 63.655(d) of subpart CC specifies performance test reporting.

TABLE 6.—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[A]—Continued

Reference	Applies to subpart CC	Comment
* * * *	* * *	* * *
63.10(d)(5)(i)	Yes[b]	Except that reports required by § 63.10(d)(5)(i) may be submitted at the same time as periodic reports specified in § 63.655(e) of subpart CC.
* * * *	* * *	* * *

Appendix to Subpart CC of Part 63 [Amended]

17. Table 10 of the appendix to subpart CC of part 63 is amended by revising footnotes d, f, and g to read as follows:

TABLE 10.—MISCELLANEOUS PROCESS VENTS-MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS FOR COMPLYING WITH 98 WEIGHT-PERCENT REDUCTION OF TOTAL ORGANIC HAP EMISSIONS OR A LIMIT OF 20 PARTS PER MILLION BY VOLUME

* * * * *

[d] NCS = Notification of Compliance Status report described in § 63.655.

* * * * *

[f] When a period of excess emission is caused by insufficient monitoring data, as described in § 63.655(g)(6)(i)(C) or (D), the duration of the period when monitoring data were not collected shall be included in the Periodic Report.

[g] PR = Periodic Report described in § 63.655(g).

* * * * *

18. Table 11 of the appendix to subpart CC of part 63 is added as follows:

Appendix to Subpart CC of Part 63—Tables

* * * * *

TABLE 11.—APPLICABILITY OF NESHAP GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CC

Citation	Applies to subpart CC	Comment
63.1(a)(1)–63.1(a)(3)	Yes	General Applicability.
63.1(a)(4)	No	This table specifies applicability of General Provisions to Subpart CC.
63.1(a)(5)	No	[Reserved].
63.1(a)(6)	No.	
63.1(a)(7)–(9)	No	[Reserved].
63.1(a)(10)	No	Subpart CC specifies calendar or operating day.
63.1(a)(11)–63.1(a)(12)	Yes.	
63.1(b)(1)	No	Initial Applicability Determination Subpart CC specifies applicability.
63.1(b)(2)	No	[Reserved].
63.1(b)(3)	No.	
63.1(c)(1)	No	Subpart CC specifies requirements.
63.1(c)(2)	No	Area sources are not subject to subpart CC.
63.1(c)(3)–(4)	No	[Reserved].
63.1(c)(5)	Yes	Except that notification requirements in subpart CC apply.
63.1(d)	No	[Reserved].
63.1(e)	Yes	Applicability of Permit Program.
63.2	Yes	Definitions (63.641 specifies that if the same term is defined in subparts A and CC, it shall have the meaning given in subpart CC.
63.3	Yes	Units and Abbreviations.
63.4(a)(1)–(2)	Yes.	
63.4(a)(4)–(5)	Yes	[Reserved].
63.4(b)–63.4(c)	Yes	Circumvention/Fragmentation.
63.5(a)(1)	Yes	Construction and Reconstruction—Applicability—Replace term ''source'' and ''stationary source'' in § 63.5(a)(1) with ''affected source''.
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Existing, New, Reconstructed Sources—Requirements.
63.5(b)(2)	No	[Reserved].
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes.	
63.5(b)(5)	No	[Reserved].
63.5(b)(6)	Yes.	
63.5(c)	No	[Reserved].
63.5(d)(1)(i)	Yes	Application for Approval of Construction or Reconstruction—Except subpart CC specifies the application is submitted as soon as practicable before startup but no later than 90 days (rather than 60) after the promulgation date where construction or reconstruction had commenced and initial startup had not occurred before promulgation.
63.5(d)(1)(ii)	Yes	Except that emission estimates specified in (63.5(d)(1)(ii)(H) are not required.
63.5(d)(1)(iii)	Yes.	
63.5(d)(2)	Yes.	

TABLE 11.—APPLICABILITY OF NESHAP GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CC—Continued

Citation	Applies to subpart CC	Comment
63.5(d)(3)	Yes.	
63.5(d)(4)	Yes.	
63.5(e)	Yes	Approval of Construction or Reconstruction.
63.5(f)(1)	Yes	Approval of Construction or Reconstruction Based on State Review.
63.5(f)(2)	Yes	Except that 60 days is changed to 90 days and cross-reference to (b)(2) does not apply.
63.6(a)	Yes	Compliance with Standards and Maintenance—Applicability.
63.6(b)(1)	No.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	No.	
63.6(b)(5)	Yes	Notification Requirements.
63.6(b)(6)	No	[Reserved].
63.6(b)(7)	Yes.	
63.6(c)(1)	Yes.	
63.6(c)(2)	No	Subpart CC specifies compliance dates.
63.6(c)(3)–(4)	No	[Reserved].
63.6(c)(5)	Yes.	
63.6(d)	No	[Reserved].
63.6(e)(1)	Yes	Operation and Maintenance Requirements.
63.6(e)(2)	No	[Reserved].
63.6(e)(3)(i)	Yes	Startup, Shutdown, and Malfunction Plan (SSM).
63.6(e)(3)(ii)	No	[Reserved].
63.6(e)(3)(iii)	Yes.	
63.6(e)(3)(iv)	Yes	Except that reports of actions not consistent with plan are not required within 2 and 7 days of action but rather must be included in next periodic report.
63.6(e)(3)(v)–(ix)	Yes.	
63.6(f)(1)	Yes	Compliance with Emission Standards.
63.6(f)(2)(i)	Yes.	
63.6(f)(2)(ii)	Yes	Subpart CC specifies use of monitoring data in determining compliance.
63.6(f)(2)(iii)(A)–63.6(f)(2)(iii)(C)	Yes.	
63.6(f)(2)(iii)(D)	No.	
63.6(f)(2)(iv)–(v)	Yes.	
63.6(f)(3)	Yes.	
63.6(g)	Yes	Alternative Standard.
63.6(h)	No	Compliance with Opacity/VE Standards Subpart CC does not include opacity/VE standards.
63.6(i)(1)–63.6(i)(14)	Yes	Extension of Compliance.
63.6(i)(15)	No	[Reserved].
63.6(i)(16)	Yes.	
63.6(j)	Yes	Exemption from Compliance.
63.7(a)(1)	No	Performance Test Requirements—Applicability and Dates—Subpart CC specifies the applicable test and demonstration procedures.
63.7(a)(2)	No	Test results must be submitted in the notification of compliance status report due 150 days after the compliance date.
63.7(a)(3)	Yes.	
63.7(b)	Yes	Notifications—Except Subpart CC specifies notification at least 30 days prior to the scheduled test date rather than 60 days.
63.7(c)	Yes	Quality Assurance/Test Plan.
63.7(d)	Yes	Testing Facilities.
63.7(e)(1)–63.7(e)(2)	Yes	Conduct of Tests.
63.7(e)(3)	No	Subpart CC specifies the applicable methods and procedures.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Alternative Test Method—Subpart CC specifies the applicable methods and provides alternatives.
63.7(g)	No	Data Analysis, Recordkeeping, Reporting—Subpart CC specifies performance test reports and requires additional records for continuous emission monitoring systems.
63.7(h)(1)–63.7(h)(3)	Yes	Waiver of Tests.
63.7(h)(4)	No.	
63.7(h)(5)	Yes.	
63.8(a)	No	Monitoring Requirements—Applicability.
63.8(b)(1)	Yes	Conduct of Monitoring.
63.8(b)(2)	Yes.	
63.8(b)(3)	Yes.	
63.8(c)(1)(i)	Yes	CMS Operation and Maintenance.
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	

TABLE 11.—APPLICABILITY OF NESHAP GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART CC—Continued

Citation	Applies to subpart CC	Comment
63.8(c)(3)	Yes	Except that operational status verification includes completion of manufacturer written specifications or installation operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment will monitor accurately.
63.8(c)(4)	No	Monitoring frequency is specified in subpart CC.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	Yes	Quality Control.
63.8(e)	Yes	CMS Performance Evaluation—May be required by Administrator.
63.8(f)(1)	Yes	Alternative Monitoring Method.
63.8(f)(2)	Yes.	
63.8(f)(3)	Yes.	
63.8(f)(4)(i)–(iv)	Yes.	
63.8(f)(5)(i)–(iii)	Yes.	
63.8(f)(6)	No.	
63.8(g)	No	Subpart CC specifies data reduction for CMS.
63.9(a)	Yes	Notification Requirements—Applicability—Duplicate notification of compliance status report to RA may be required.
63.9(b)(1)(i)	Yes	Initial Notifications.
63.9(b)(1)(ii)	Yes.	
63.9(b)(1)(iii)	Yes.	
63.9(b)(2)	Yes.	
63.9(b)(3)	No	[Reserved].
63.9(b)(4)	Yes.	
63.9(b)(5)	Yes.	
63.9(c)	Yes	Request for Compliance Extension.
63.9(d)	Yes	New Source Notification for Special Compliance Requirements.
63.9(e)	Yes	Except notification is required at least 30 days before test.
63.9(f)	Yes	Notification of VE/Opacity Test.
63.9(g)	No.	
63.9(h)	Yes.	
63.9(i)	Yes	Adjustment of Deadlines.
63.9(j)	No	Change in Previous Information.
63.10(a)	Yes	Recordkeeping/Reporting—Applicability.
63.10(b)(1)	Yes.	
63.10(b)(2)(i)–(xiv)	Yes.	
63.10(b)(3)	Yes.	
63.10(c)	Yes	Additional CMS Recordkeeping.
63.10(d)(1)	No	General Reporting Requirements.
63.10(d)(2)	Yes	Performance Test Results.
63.10(d)(3)	Yes.	
63.10(d)(4)	Yes	Progress Reports.
63.10(d)(5)(i)	Yes	Startup, Shutdown, and Malfunction Reports—Except that reports are not required if actions are consistent with SSM plan, unless requested by permitting authority.
63.10(d)(5)(ii)	Yes	Except that actions taken during a startup, shut-down, or malfunction that are not consistent with the plan do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in next periodic report.
63.10(e)(1)	Yes	Additional CMS Reports.
63.10(e)(2)	No.	
63.10(e)(3)	Yes	Excess Emissions/CMS Performance Reports.
63.10(e)(4)	No.	
63.10(f)	Yes	Recordkeeping/Reporting Waiver.
63.11	Yes	Control Device Requirements Applicable to flares.
63.12	Yes	State Authority and Delegations.
63.13	Yes	Addresses.
63.14	Yes	Incorporation by Reference.
63.15	Yes	Availability of Information/Confidentiality.

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Part III

Postal Regulatory Commission

39 CFR Parts 3001, 3010, 3015, and 3020
Administrative Practice and Procedure, Postal Service; Proposed Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001, 3010, 3015 and 3020

[Docket No. RM2007–1; Order Nos. 26 and 27]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.
ACTION: Proposed rule.

SUMMARY: A recently-enacted federal law directs the Commission to develop rules to implement a new postal ratemaking system. This proposal responds to that directive by presenting rules addressing market dominant and competitive products, including negotiated service agreements, the regulatory calendar, and product lists. This document incorporates a revision identified in an errata notice. Issuance of this document will allow the Commission to consider comments and, if appropriate, to make revisions prior to adoption of final rules.

DATES: Submit comments by September 24, 2007; submit reply comments by October 9, 2007.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

Regulatory History

72 FR 5230, February 5, 2007.
72 FR 29284, May 25, 2007.
72 FR 33261, June 15, 2007.

I. Introduction

This is the third in a series of orders designed to establish regulations implementing a modern system for regulating rates and classes for market dominant and competitive products.[1] In response to those earlier orders, the Commission received more than 100 comments from interested parties.[2] The Commission has reviewed these comments carefully. They have been useful in clarifying the Commission's analysis, and the parties' contributions are appreciated.

In this order, the Commission outlines how it intends to administer various provisions of the Postal Accountability and Enhancement Act (PAEA), Pub. L. No. 109–435, 120 Stat. 3198 (December 20, 2006). The proposed regulations are set forth in section V. Comments are due by September 14, 2007. Reply comments are due by September 28, 2007.

Although afforded 18 months, until June 19, 2008, to promulgate the new regulations under the PAEA, the Commission has made a concerted effort to accelerate that schedule considerably. The Commission views early implementation as beneficial to all stakeholders. Early implementation of a ratemaking framework prior to the statutory deadline will enable the Postal Service to use new, streamlined procedures to initiate rate (and class) changes as needed to respond to its financial needs and market conditions. The regulations may serve as a safety valve, providing an immediate means to address challenges faced by the Postal Service and perhaps obviate the necessity for rate relief through an omnibus rate case under existing procedures. The commenters urge that such a filing should be avoided, thereby allowing the Postal Service and the Commission to dedicate more resources to thoughtfully implementing other aspects of the reform legislation. It would be unfortunate if, in this reformed environment, rate changes had to be litigated under the old cost of service system. Having this new framework in place, and the Postal Service operating under the new framework as early as practical, would provide the Postal Service flexibility to respond quickly to changed conditions.

The Commission's goal is to make this new system of rate adjustment advantageous for all stakeholders, enabling the Postal Service to price its own products, ensuring the lawfulness of competitive rates, providing increased transparency, and maintaining universal service at affordable rates. Fulfilling these objectives requires that competing interests be carefully balanced.

The Commission, among other things, identifies the mail matter that comprises each type of mail listed in section 3631(a) and the products within the competitive category of mail. It also discusses generally the mail matter that comprises each type of mail listed in section 3621(a). However, in lieu of identifying specific market dominant products, the Commission has determined that for reasons of accuracy and expedition, it would be preferable to accept the Postal Service offer to prepare and submit a draft mail classification schedule, which, inter alia, identifies the market dominant products it believes should be contained therein. This will enable the Postal Service to categorize its market dominant services into products that best serve its business needs. In addition, it will permit the Postal Service to fashion a draft mail classification schedule with what it believes is an appropriate level of detail. The Commission then will be able to evaluate this draft for consistency with the principles discussed in this order. The draft mail classification schedule is due September 14, 2007. Comments on the draft mail classification schedule are due September 28, 2007.

The proposed regulations represent the Commission's initial effort to establish a functional framework for regulating rates and classes for market dominant and competitive products. The proposed regulations do not seek to address every issue that might arise under the PAEA. The intent is that these regulations provide a reasonable starting point and that they will evolve over time.

In the sections that follow, the Commission discusses proposed regulations governing:

- Rules Applicable to Rate Adjustments for Market Dominant Products (part 3010);
- Regulation of Rates for Competitive Products (part 3015); and
- Product Lists (part 3020).

The Commission must also issue proposals amending the structure of its rules, and specific regulations applicable to complaints, reporting requirements, and commercially sensitive materials, as well as regulations to implement sections 404a and 504(f). Completing those tasks is complementary to the proposed regulations, which, once implemented, will be sufficient to enable the Postal Service to begin to operate as contemplated by the PAEA.

II. Market Dominant Products

A. Introduction

Background. This segment of the rulemaking focuses on rate changes referred to as ''rate adjustments'' in the PAEA for market dominant products. The emphasis is on proposing regulations that will provide the Postal Service with the option of pursuing its next general round of price changes under the new law's ratesetting provisions, which feature a price cap mechanism and a streamlined advance notice and review, and on providing a comprehensive framework.

Much of the discussion on this topic since the enactment of the PAEA has occurred in the context of a joint Postal Regulatory Commission–Postal Service

[1] PRC Order No. 2, January 30, 2007 and PRC Order No. 15, May 17, 2007.

[2] Attachment A to this order contains a list of the parties filing comments.

summit, regional field hearings, [3] comments filed in response to Commission orders, [4] and Congressional hearings. The Commission's preliminary conclusions about the direction of this regulatory effort reflect considered review of the comments and testimony presented in these forums.

Commenters identify two main tasks for the Commission at this stage of implementation. One is reaching consensus on conceptual and practical aspects of the scope, depth and timeframe of Commission review of planned rate changes. The other is transforming numerous statutory requirements, objectives and factors into a new ''road map'' for navigating the regulatory calendar, expedited procedures, and price cap mechanism that are core components of the new system. Most commenters observe that these tasks involve balancing policy considerations, pragmatic concerns, and a revamped PRC/Postal Service partnership.[5] They agree that the statute provides certainty on some key points, but point to numerous instances where other important issues are open to interpretation. Some urge the Commission to adopt a light-handed approach to the new notice-and-review process, with the price cap calculation being the sole focus.[6] Others caution that implementation will allow price changes to occur more often than annually, the cap to be applied unequally to products within a class of mail, and the cap to be exceeded (within a certain range) under an exception referred to as ''unused rate adjustment authority'' or the banking exception. They suggest that these possibilities may have significant implications with respect to mailers' expectations that the modern system will provide predictability, certainty and stability.

The Commission appreciates the responses to its request for assistance in developing new regulations, and finds that the commenters' observations provide useful guidance. It also appreciates the Postal Service's efforts, outside of this rulemaking, to work with mailers on developing a viable regulatory calendar and on addressing rate implementation issues. See Postal Service Reply Comments, May 7, 2007, at 3–4 and Appendix B. The Commission proposes basic rules regarding the regulatory calendar in proposed rule 3010.7.

B. Statutory Framework for Rate Changes

Section 3622(d) of the PAEA, captioned ''Requirements,'' addresses some of the mandatory features the Commission must include in the modern regulatory system.[7] It provides, in pertinent part:

(1) In General.—The system for regulating rates and classes for market-dominant products shall—

(A) include an annual limitation on the percentage changes in rates to be set by the Postal Regulatory Commission that will be equal to change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates;

(B) establish a schedule whereby rates, when necessary and appropriate, would change at regular intervals by predictable amounts;

(C) not later than 45 days before the implementation of any adjustment in rates under this section, including adjustments made under subsection (c)(10)–

(i) require the Postal Service to provide public notice of the adjustment;

(ii) provide an opportunity for review by the Postal Regulatory Commission;

(iii) provide for the Postal Regulatory Commission to notify the Postal Service of any noncompliance of the adjustment with the limitation under subparagraph (A); and

(iv) require the Postal Service to respond to the notice provided under clause (iii) and describe the actions to be taken to comply with the limitation under subparagraph (A);

(D) establish procedures whereby the Postal Service may adjust rates not in excess of the annual limitations under subparagraph (A).

* * * * *

However, the ''price cap'' in subsection 3622(d)(1)(A) is not an absolute limit; other provisions expressly require that the new system:

(E) notwithstanding any limitation set under subparagraphs (A) and (C), and provided there is not sufficient unused rate authority under paragraph (2)(C), establish procedures whereby rates may be adjusted on an expedited basis due to either extraordinary or exceptional circumstances, provided that the Commission determines, after notice and opportunity for a public hearing and comment, and within 90 days after any request by the Postal Service, that such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

* * * * *

Further, the following provisions in subsection 3622(d)(2) authorize the annual cap to be exceeded under certain conditions:

* * * * *

(C) Use of Unused Rate Authority.—

(i) Definition.—In this subparagraph, the term ''unused rate adjustment authority'' means the difference between—

(I) the maximum amount of a rate adjustment that the Postal Service is authorized to make in any year subject to the annual limitation under paragraph (1); and

(II) the amount of the rate adjustment the Postal Service actually makes in that year.

(ii) Authority. Subject to clause (iii), the Postal Service may use any unused rate adjustment authority for any of the 5 years following the year such authority occurred.

Finally, the exercise of ''banking authority'' is itself subject to the following limitations:

(iii) Limitations.—In exercising the authority under clause (ii) in any year, the Postal Service—

(I) may use unused rate adjustment authority from more than 1 year;

(II) may use any part of the unused rate adjustment authority from any year;

(III) shall use the unused rate adjustment authority from the earliest year such authority first occurred and then each following year; and

(IV) for any class or service, may not exceed the annual limitation under paragraph (1) by more than 2 percentage points.

* * * * *

These comprehensive provisions unequivocally establish subsection 3622(d) as the administrative cornerstone of the new rate setting system for market dominant products. Collectively, streamlined advance review procedures, the price cap mechanism, the banking exception, and the exigency clause are designed to foster pricing flexibility, reduce burden, and facilitate quick implementation of rate changes. The Commission's proposed regulations are intended to fill in many of the details of price cap

[3] *See* PRC Order No. 19, Notice and Order on Field Hearings to Receive Testimony on Implementation of Modern System of Ratemaking, Docket No. RM2007–1, June 8, 2007.

[4] The parties have submitted several rounds of comments in response to the two advance notices of proposed rulemaking. As a matter of convenience, citations to these comments will identify the party's comments by filing date; reply comments will be so denoted. For example, the referenced Postal Service initial comments are cited as Postal Service Comments, June 18, 2007, at xx; reply comments are cited similarly, e.g., PSA Reply Comments, July 3, 2007, at xx.

[5] *See, for example,* Advo Comments, April 6, 2007, at 2–3; MOAA Reply Comments, May 7, 2007, at 1–2; PSA Comments, April 6, 2007, at 1–4; Time Warner Comments, April 6, 2007, at 1–3; and Postal Service Comments, April 6, 2007, at 2–4.

[6] Jon Mulford, for example, states: ''[the] PAEA has given the Commission extraordinary power to regulate the USPS. The Commission, in devising its system for setting rates * * * should at all costs avoid unnecessarily tying USPS management's hands as they attempt to cope with an impending financial crisis.'' Mulford Comments, March 9, 2007, at 5.

[7] These requirements are not ''stand alone'' elements of the new system, but must be given effect in concert with certain statutory factors and objectives. However, unlike the ''requirements,'' most of which are new postal ratemaking features, many of the factors and objectives are identical to those employed in the Postal Reorganization Act of 1970 (PRA) ratemaking.

administration, content of rate change filings, and due process.

C. Summary of Main Issues

The PAEA specifies use of the Bureau of Labor Statistics' widely-known CPI–U, but does not address some related aspects of administration, such as how to calculate the index adjustment and how to calculate the base to which the adjustment applies. It also does not address the extent of documentation of worksharing discounts. The Commission sought comments on these matters in its Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, May 17, 2007.

Additional implementation issues raised in the comments include:

—whether the phrase ''not later than 45 days'' used in section 3622(d)(1)(C) limits Commission review to this number of days, or allows a longer period;

—whether price change filings, other than exigent requests, involve ''barebones'' notice and documentation or more comprehensive support;

—Whether the Commission's advance review is limited to assessing compliance with the price cap provisions or extends to other matters, such as an evaluation of worksharing discounts;

—whether the Commission should solicit public comment in routine rate change filings;

—whether the authority to ''bank'' unused rate adjustment authority for up to 5 years carries with it the ability to apply the banked pricing credit to a class other than the one in which it was accumulated; and

—whether the rules should define ''exigent circumstances'' and whether trial-type proceedings must or should be held.

D. Structure of New Proceedings and Rules

Review of the comments points to interest in a new road map for rate changes. William Berkley usefully highlights this by observing:

> We need to keep in mind that we have to keep proceedings simple and rules of practice simple to avoid a system that only postal attorneys and economists can use. We ask when you establish these new rules that you remember to keep it as simple as you can. Proceedings before every regulator are always difficult, but let us also insure that we make it easy to navigate and understand the proceedings in this evolving system.

Berkley Testimony at 5.[8]

United Parcel Service (UPS), addressing implementation in general, asserts: ''To the extent possible, the Commission should interpret PAEA in a way that recognizes the value of administrative simplicity and practicality, and that minimizes the Postal Service's burden, while remaining consistent with the statutory requirements.'' UPS Reply Comments, July 3, 2007, at 10.

Accordingly, the Commission proposes to:

—Organize most of the rules directly affecting market dominant products into a largely self-contained unit;

—Standardize terms, definitions and methods to the extent feasible; and

—Establish streamlined proceedings to facilitate all types of price changes.

The Commission proposes to establish a separate part, designated part 3010, Rules Applicable to Rate Adjustments for Market Dominant Products, in 39 CFR. This part is divided into five subparts:

Subpart A—General Provisions.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1 Rate Adjustments).

Subpart C—Rules for Applying the Price Cap.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments).

Subpart E—Rules for Rate Adjustments in Exigent Circumstances (Type 3 Rate Adjustments).

E. Overview of Proposed Subpart A—General Provisions

This subpart consists of seven proposed rules. The first provision, proposed 3010.1, captioned ''Applicability,'' is a general representation that the rules in subpart A implement the ratesetting policies and procedures of the PAEA for market dominant products. It also notes a distinction between ''notice'' filings and ''request'' filings.

Proposed 3010.2(a) codifies the following basic scenarios in which rate changes for market dominant products may be addressed: under price cap authority or a variation thereon, often referred to by commenters as the banking exception or banking authority; under a special contractual, or negotiated service agreement; and under an exigent circumstance. For ease of reference and reporting, this rule reflects the Commission's proposal to refer to each of these scenarios as ''types'' of filings, similar to the approach that has been used successfully for six categories of library references since Docket No. RM98–2. The Commission notes, for example, that for purposes of conducting the 10-year assessment of the new ratesetting approach, it may prove useful to have a ready tool for determining how many different types of notices and requests have been filed. The Commission incorporates these definitions into the regulations and the accompanying discussion. The following table summarizes this approach.

TABLE II–1.—SUMMARY OF ALTERNATIVE FILING TERMS

Statutory source	Filing basis	Proposed alternative(s)
39 U.S.C. 3622(d)(1)(A)	''annual limitation on the percentage changes in rates''.	Type 1–A Rate Adjustment.
39 U.S.C. 3622(d)(2)(C)(i)	''unused rate adjustment authority''	Type 1–B Rate Adjustment.
39 U.S.C. 3622(c)(10)	''the desirability of special classifications . . . including agreements between the Postal Service and postal users''.	Type 2 Rate Adjustment.
39 U.S.C. 3622(d)(1)(E)	''due to either extraordinary or exceptional circumstances''.	Type 3 Rate Adjustment.

[8] Testimony of William S. Berkley, President and CEO, Tension Envelope Corporation, Before the United States Postal Regulatory Commission Field Hearing, Kansas City, June 22, 2007.

F. Overview of Proposed Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1 Rate Adjustments)

This subpart consists of five rules. These rules lay out basic procedures and certain fundamental Commission positions. Some of the debate among commenters centered on the timeframe for Commission action in a price change proceeding and on public input. The timeframe issue stems from the highlighted wording in the following passage from the PAEA:

> (C) not later than 45 days before the implementation of any adjustment in rates under this section, including adjustments made under subsection (c)(10)—
>
> (i) require the Postal Service to provide public notice of the adjustment;
>
> (ii) provide an opportunity for review by the Postal Regulatory Commission.
>
> 39 U.S.C. 3622(d)(1)(C)(i)–(ii).

The crux of the issue is whether the statute intends 45 days as the maximum or minimum period for advance notice and review. The Postal Service appears to read this language as establishing a statutory maximum, but acknowledges that some changes, as a matter of good business practice, such as those involving new worksharing discounts, will create more implementation issues. It indicates that it intends to provide additional notice in these instances. Postal Service Comments, June 18, 2007, at 14–15. The Mail Order Association of America (MOAA) shares the Postal Service's view. MOAA Reply Comments, May 7, 2007, at 14–15. Many commenters, however, see the wording in the statute as establishing a minimum, and therefore clearly authorizing the Commission to require the Postal Service to provide more notice. Time Warner suggests 90 days. Time Warner Comments, April 6, 2007, at 15.

The Commission concludes that as a matter of statutory interpretation, the Postal Service's position reads the qualifier ''at least'' completely out of the statute. The conclusion more consistent with the statute's overall theme of transparency is that 45 days is the minimum period required by the statute, and the Commission may require a longer period in certain circumstances.[9] At the same time, it seems that any extension should be in keeping with the notion of streamlined review; thus, the four months the OCA suggests as the routine approach appears excessive for the Commission's task of assessing the planned rate changes in terms of the price cap and/or the use of banking authority.

The Commission concludes that for purposes of drafting an initial set of regulations, the language from the statute requiring notice and review ''not later than 45 days'' can be carried over directly into proposed rules 3010.10(a)(1) and (2). A provision in proposed rule 3010.10(b) encouraging more time for review recognizes the Postal Service's representations on this record that it intends to provide additional time for review when price changes are more complicated. Postal Service Comments, June 18, 2007, at 9–10. Proposed rule 3010.10(a) does not require the Postal Service to publish a **Federal Register** notice concerning a planned adjustment, but does contemplate broad dissemination of its intent to the mailing community and to the general public. This typically provides more effective notice than a **Federal Register** notice, in keeping with a modern rate setting system, and reduces administrative burden by freeing the Postal Service from the production details necessarily associated with **Federal Register** publication. The Commission notes that it imposes on itself, in proposed rule 3010.13(a), an obligation to publish notice of a rate adjustment filing in the **Federal Register**.

Commenters are divided on the question of public input during the review period. Some, including the Postal Service, argue against it on grounds that the logic of the PAEA suggests that if public input is not expressly provided for in the statute, it is not authorized. On the other hand, the OCA and several others think it would be helpful. Newspaper Association of America (NAA), for example, asserts that allowing public comment would promote transparency. NAA Comments, March 30, 2007, at 2. NAA acknowledges that the new statute expressly provides for public participation when rate adjustments are based on exigent circumstances, but asserts:

> Nothing in the PAEA, however, prohibits the Commission from inviting such comment also when the Postal Service purports to notice rate adjustments consistent with the CPI limitation. Public comment—which necessarily would have to be expedited and would be submitted in writing—would promote transparency and could provide information helpful to the Commission's review.

Id. at 7.

It adds:

> Where the Postal Service's notice is straightforward, there likely will be relatively few comments. However, in instances when the Postal Service notices a more complicated set of rate changes, the Commission may benefit from the insights that the mailing community and broader public may be able to offer. The stakes of this review are important because the rates that will take effect from this process will be in effect for a substantial period of time before they are later reviewed by the Commission either in an annual review or in a complaint.

Id. at 7–8.

The Commission agrees that the statute does not expressly provide for public participation during the review period as it does in the exigency clause (in subsection 3622(d)(1)(E)). At the same time, the statute gives the Commission broad discretion in deciding on how to conduct its review. It follows that if the Commission believes public input might be helpful in determining the compliance of the anticipated rate changes with the statutory pricing provisions, there is no statutory bar to incorporating this into its review proceedings/procedures. The Commission believes this will be the case, and provides, in proposed rule 3010.13(a) for 20 days (from the date of filing of a rate adjustment notice) for the public to file written comments.

Proposed rule 3010.11 addresses several ''housekeeping'' details. It notes the limitation on rate increases in any 12-month period, the existence of CPI–U as a limitation, the exception allowing annual recapture of unused rate authority, and the allocation of unused rate authority to each class of mail. The latter provision directly addresses some commenters' concerns about ''cross-class'' banking.

Proposed rule 3010.12 adopts the PAEA's stated inflation measure (CPI–U) and describes the source as the Bureau of Labor Statistics. The clarity of the PAEA on this point meant that there was no debate among the commenters on the benchmark that is to be used.

Proposed rules 3010.13 and 14 address the nature of proceedings and the content of rate adjustment filings, and are the most extensive rules in this subpart. The flagship proceedings under the former statutory structure were 10-month trial-type ''omnibus'' rate and classification proceedings, bookended between considerable advance preparation on the part of the Postal Service (and many mailers) and a post-decision phase encompassing review by the Governors and the potential for reconsideration. Commenters agree that, barring a final omnibus rate case under 39 U.S.C. 3622(f), the PAEA casts that apparatus aside and replaces it with a

[9] Based on the Postal Service's comments, it anticipates filing 90 days in advance of implementation with the first 45 days constituting the statutory period for Commission review and the second half for implementation.

simpler process. In keeping with the new statutory emphasis on simpler proceedings, the Commission does not propose formal discovery, Notices of Inquiry, Presiding Officer's Information Requests, testimony, and hearings. It anticipates handling resolution of discrepancies or other matters through direct communication with the Postal Service.

There also has been considerable discussion of the statutory scope of the Commission's review. The main positions are that it extends to:

—Only, or primarily, the price cap;
—The price cap, plus some evaluation of worksharing; and
—The price cap, worksharing evaluation, plus consistency with statutory factors and objectives, *plus* identification of certain features, such as differential intra-class treatment exceeding a certain percentage.

Some commenters, such as the Postal Service and MOAA, advocate ''light-handed'' review, the OCA seeks extensive review, and some, such as the NAA, take a middle ground. NAA suggests that during the review period, the Commission has, at a minimum, legal authority:

—To review the notices of rate adjustments for compliance with the CPI cap;
—To review the noticed change to ensure at least facial compliance with the provisions of section 3622(e) regarding workshare discounts;
—To prohibit rates that are unlawful on their face from taking effect; and
—To review the justification for changes in rate categories within a class that exceed CPI by an amount set by the Commission, such as the CPI plus 2 percent proposed by NAA.

NAA Reply Comments, May 7, 2007, at 25–26.

The Commission agrees that the PAEA ushers in a fundamentally different approach to rate regulation for market dominant products, and that its implementing regulations should honor the spirit and letter of the new law. Proposed rule 3010.13(b) limits the appropriate scope of public comments to compliance with the price cap formula and consistency with certain statutory policies; thus, they represent a marked shift away from PRA-style in-depth examination. The proposed scope of public comment is no longer open-ended. The Commission does not invite, and will not entertain, public comment during the 45-day review period on matters such as costing methods. Moreover, in proposed rule 3010.13(e), the Commission expedites review to determine the consistency of an amended notice of rate adjustment with filing requirements.

Filing contents. Proposed rule 3010.14 describes the contents of the Postal Service's rate adjustment filings. The notice is to include a schedule of proposed rates, identification of the effective date(s), and a representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) of the proposed rates.

In addition, proposed rule 3010.14(b)(1)–(8) identifies explanatory material that is to be provided. This includes the amount of the applicable change in CPI–U calculated under Commission rules and the percentage change in rates for each class, calculated as required by Commission rules along with supporting workpapers. It also includes the amount of new unused rate authority that will be generated by the instant notice of rate adjustment and a 5-year schedule showing unused rate authority for each class of mail, along with supporting calculations. For Type 1–B filings, which draw on recaptured pricing authority, the Postal Service is to identify for each affected class how much existing unused rate authority is used in the proposed rates calculated as required by Commission rules. *See* proposed rule 3010.14(d). An explanation must be provided if new unused rate authority will be generated for a class of mail that is not expected to cover its attributable costs.

Several commenters express concern about the potential for intra-class increases to exceed the cap. NAA asserts that the Postal Service's authority to exceed the annual cap for a rate category is not unlimited, as the phrase ''predictable amounts'' is not limited to the aggregate change for a class, but ''on its face requires that the specific rate changes themselves within the class should be reasonably predictable.'' NAA Comments, March 30, 2007, at 9. It contends that objective 8, which requires that the rate schedule be ''just and reasonable'' supports this interpretation. *Id.* NAA suggests that the Commission impose a standard whereby, absent special justification, increases for a rate category beyond a pre-established range (such as CPI plus 2 percent) would not be considered ''predictable'' or ''just and reasonable.'' *Id.* at 9–10. It asserts that this approach, which it refers to as a ''soft band,'' would satisfy the statutory objective of providing the Postal Service with pricing flexibility, while honoring the provision in objective 8 allowing changes of unequal magnitude within, between or among class of mail. *Id.* at 9; NAA Reply Comments, May 7, 2007, at 8. In terms of proposed rules, NAA suggests that the Postal Service could be required to certify that no rate would change by more than the permitted range (when this is the case) or bring changes exceeding the range to the Commission's attention and provide additional justification. NAA Comments, March 30, 2007, at 10. It contends that over time, as the Commission reviews these explanations on a case-by-case basis, it will become evident which explanations are adequate to allow the rates to become effective, and which are not. NAA Reply Comments, May 7, 2007, at 8.

The Parcel Shippers Association (PSA) does not suggest prohibiting adjustments beyond a certain level, but suggests that the Commission require the Postal Service to provide a written, on the record, justification for any market dominant rate increases that *substantially* exceed inflation. PSA Comments, April 6, 2007, at 4–5, 22–23. (Emphasis in original.)

In a similar vein, OCA suggests, given the potential for large percentage increases in rates for individual subclasses, that subclass increases be capped at 50 percent above the overall class increase. OCA Comments, June 18, 2007, at 2, 15–19. It notes:

> Some of the principles of rate setting include continuity of expectations, implementation of rates that are understandable, and perceived and/or actual fairness. Accordingly, some level of subclass protection appears to be appropriate. We suggest 50 percent as reasonable: that is, if rates for a class of service increase by an overall maximum of two percent, no subclass rate would increase by more than three percent.

Id. at 15.

Discover Financial Services, LLC (DFS) asserts that the OCA's recommendation is ''at odds with the legislation, which nowhere indicates that such a cap would be permissible. Indeed, notions that rates should be capped in any fashion other than at the class level were much debated in Congress and specifically rejected as not giving the Postal Service sufficient rate flexibility.'' DFS Further Comments, July 16, 2007, at 4.

NAA, PSA and OCA identify a clear example of where statutory objectives may conflict. The Commission does not view capping subclass increases as sanctioned by the PAEA. Requiring a separate certification or justification is not statutorily suspect in the same sense; however, adopting a rule of this sort makes the process cumbersome. It is to be expected that rate adjustments within a class will be both above and

below average. Requiring written justification for individual rates is contrary to the goals of a simpler, more flexible, process. The Commission finds that the Postal Service should be given an opportunity to exercise its pricing flexibility by making changes of unequal magnitude without having to file separate justification for what some might consider ''excessive'' above-cap increases within a class. Should the Postal Service abuse this discretion, and regularly fail to develop rate adjustments consistent with the statutory objective of maintenance of just and reasonable rate schedules, additional regulations in this area can be developed.

Information supporting proposed workshare discounts. The PAEA charges the Commission with establishing a modern system of ratemaking that is designed to achieve nine specific objectives including to maximize incentives to reduce costs and increase efficiency. The PAEA also enumerates several factors which must be considered by the Commission in establishing this system. Two of these factors—3622(c)(5), the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service; and 3622(c)(12), the need for the Postal Service to increase its efficiency and reduce its costs—can be linked directly to workshare discounts. Section 3622(e)(2) directs the Commission to ensure that [workshare] discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity.[10]

The PAEA defines workshare discounts as rate discounts provided to mailers for the presorting, pre-barcoding, handling, or transportation of mail. Both the Commission and the Postal Service have long held the view that setting workshare discounts in line with the Efficient Component Pricing Rule (ECPR) is an effective method for encouraging efficient mailing practices. The ECPR is the principle that workshare discounts should be set equal, on a per-unit basis, to the costs avoided by the Postal Service when the mailer performs the workshare activity.

[10] There are four limited exceptions to this mandate: (1) When the discount is new and mailers must be encouraged to use it; (2) when the discount is already in place and reducing it will cause rate shock; (3) when the discount is provided in connection with subclasses consisting exclusively of mail matter of educational, cultural, scientific, or informational value; and (4) when reducing or eliminating the discount would cause a shift in mail mix that would lead to operational inefficiencies for the Postal Service. For the first two exceptions, the Postal Service must eventually phase out the excess discount.

Several parties reiterated the importance of ECPR in encouraging efficiency and satisfying the objectives of the PAEA. Pitney Bowes states ''regulations should require the Postal Service to establish discounts that reflect the full measure of workshare-related costs avoided to the extent practicable.'' Pitney Bowes Comments, April 6, 2007, at 36. In addition, Pitney Bowes sponsored the comments of John Panzar which focus exclusively on the merits of continued use of ECPR in ratemaking. The Alliance of Nonprofit Mailers, National Association of Presort Mailers, and National Postal Policy Council (ANM/NAPM/NPPC) believe that the Postal Service's rates should be presumed reasonable as long as the discounts satisfy the ECPR. ANM/NAPM/NPPC Comments, April 6, 2007, at 16–19.

Support for efficient component pricing is also found in testimony received during the Commission's field hearings. Don Hall, Jr., President and CEO of Hallmark Cards, seeks assurance that the workshare discounts will reflect the true savings to the Postal Service. Transcript of Kansas City Field Hearing, June 22, 2007, at 29. John Campo, Vice President of Postal Relations for Pitney Bowes, said the ''regulations should encourage the Postal Service to adopt pricing incentives or work sharing discounts to fully reward mailer activity that reduces total postal system costs.'' Transcript of Wilmington Field Hearing, July 9, 2007, at 10. John Carper, Director of Mail and Receiving Services, Pepperdine University, claims that ''[worksharing] can flourish fully only if the discounts offered by the Postal Service * * * he costs that the Postal Service saves.'' Transcript of Los Angeles Field Hearing, June 28, 2007, at 39.

In contrast, Advo, Inc. presents three reasons why ECPR should not be followed in setting rates under the PAEA:

> First, the statute does not permit consideration of factors other than compliance with price caps in the review process. Second, ECP, although useful in theory as a pricing tool, is not the only appropriate consideration in setting discounts and is susceptible to being misapplied. Third, adoption of ECP as the ''gold standard'' will inevitably and unnecessarily impinge on the Postal Service's pricing flexibility—a flexibility that is imperative to its ability to remain viable under the price cap regime.

Advo Reply Comments, July 3, 2007, at 6.

MOAA, NAA, and the Postal Service recognize the importance of the ECPR, but contend that other, perhaps competing, factors are also important. Therefore, they believe that ECPR should not be a requirement for workshare discounts.

The Commission strongly believes that efficient component pricing should be used as a guiding principle in establishing and maintaining workshare discounts. In both sections 3622(b) and 3622(c) the statute stresses the need for efficient rates and efficient component pricing is an established method of measuring efficient ratemaking. Nonetheless, the Commission recognizes that other factors must also be considered, and that the PAEA grants the Postal Service substantial flexibility in setting rates. However, in the interest of transparency and accountability, the Postal Service has a burden to explain how its rates, including workshare discounts, meet the objectives and factors of the PAEA.

The Postal Service has proposed that when it files its notice of price adjustment, it will also file, for pre-existing workshare discounts, a comparison of the new (or unchanged) discount price with the historical, Commission reviewed cost avoidances of the last Annual Compliance Review, and will provide appropriate justification for any discount that exceeds those cost avoidances. Postal Service Comments, June 18, 2007, at 11. The proposed rules reflect this undertaking. To meet its burden of ensuring that the rates are in compliance with the objectives and factors of the PAEA, the Postal Service must also identify and explain any discounts that are substantially below the cost avoidances.

The Postal Service is to provide with each notice of rate adjustment a schedule of the workshare discounts included in the proposed rates, together with a companion schedule listing underlying avoided costs, along with supporting workpapers. The avoided cost figures must be developed from the most recent PRC Annual Compliance Report. The Postal Service is to provide a separate justification for all proposed workshare discounts that exceed avoided costs. The Postal Service shall also identify and explain discounts that are set substantially below avoided costs, and explain any relationship between discounts that are above and those that are below avoided costs.

In addition, when new workshare discounts are established, the Postal Service is to include with its filing a statement explaining its reasons for establishing the discount; provide all data, economic analyses, and other information believed to justify the discount; and certify, based on

comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

Lastly, the Postal Service is to provide a discussion of how the proposed rates will help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C 3622(c).

G. Overview of Subpart C—Rules for Applying the Price Cap

This subpart consists of nine rules related primarily to administration of the price cap mechanism. Proposed rule 3010.21 addresses how to calculate the statutory annual inflation-based limitation. A question has arisen over the

> * * * an annual limitation * * * equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation *over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates.*

39 U.S.C. 3622(d)(1)(A). (Emphasis added.)

Two suggestions have emerged on this record, but commenters generally agree that both approaches are consistent with the statute. One is referred to as the ''point-to-point'' method and was initially suggested by the Postal Service and the OCA. The other is the ''running average'' or ''weighted average'' method which is incorporated in the proposed rules.

JPMorgan Chase & Company (Chase) comments are representative. Chase urges the Commission to calculate the index adjustment based on a 12-month average of CPI levels, rather than on a ''snapshot'' of year-over-year changes to the CPI between a single pair of beginning and end dates. It reasons:

> While the two approaches should achieve similar results over the long run, the use of the twelve-month average is likely to produce a much less bumpy and volatile path along the way by damping the short-term oscillations in the CPI index. For Chase and other mailers that operate on an annual budget cycle—i.e., for the mailers that generate most of the Postal Service's volume, reducing the short-term unpredictability of cost increases is extremely important. Emens Testimony at 5.[11]

Many parties commented that they prefer the moving average method because it provides more predictability and stability in rates. NAA states, the average method ''better advance[s] the statutory objective of creating 'predictability and stability in rates' while promoting transparency in rates and assuring that the Postal Service is financially sound.'' NAA Comments, June 18, 2007, at 2. See also Advo Comments, June 18, 2007, at 2; Advo Reply Comments, July 3, 2007, at 1; GCA Reply Comments, July 3, 2007, at 1–2; Pitney Bowes Reply Comments, July 3, 2007, at 3; and PostCom Reply Comments, July 3, 2007, at 2.

Contrary to these views, OCA states that the point method ''does not result in significantly less rate stability and predictability.'' OCA Reply Comments, July 3, 2007, at 6. It contends that the moving average method ''would have substantial lags in the updating of rates.'' OCA Initial Comments, June 18, 2007, at 7. *See also* Valpak Comments, June 18, 2007, at 5; and OCA Reply Comments, July 3, 2007, at 2–4.

The Postal Service expressed concern that using the moving average method includes 24 months of data rather than 12. USPS states, ''It is arguable that calculating the price cap by reference to CPI-U data over a 24-month period is counter to the statutory requirement that the CPI calculation be ''equal to'' the change in CPI-U ''over the most recent available 12-month period.'' Postal Service Comments, June 18, 2007, at 3–4. APWU also believes that the point method better adheres to the plain language of the PAEA. APWU Comments, June 18, 2007, at 2–3. APWU and Valpak advocate the point method as providing more transparency and less administrative burden. APWU Comments, June 18, 2007, at 2; and Valpak Comments, June 18, 2007, at 4–5.

The majority of commenters are satisfied that both the moving average method and point method meet the statutory requirements of the PAEA. MOAA states, ''The provisions of [the] PAEA are sufficiently broad that either the [moving average method] or the [point method] could be used for the purpose of calculating the CPI cap limitation as set forth in 3622 (b), (c) and (d).'' MOAA Comments, June 18, 2007, at 1. *See also* GCA Comments, June 18, 2007, at 2; Advo Comments, June 18, 2007, at 2; PostCom Comments, June 18, 2007, at 2; and Pitney Bowes Comments, June 18, 2007, at 2.

The Commission proposes to use the moving average method of calculating the CPI–U limitation. This method provides mailers with stable and predictable rates, and also grants the Postal Service the same benefits. The moving average method does not impose any undue administrative burden on the Postal Service and does not inhibit transparency. The Commission finds the increased predictability and stability resulting from use of the moving average method are quite valuable, and directly further the specific objectives of the PAEA. The Commission derives the moving average method from Bureau of Labor Statistics (BLS) monthly CPI–U values. At the end of each calendar year, BLS calculates the annual percentage change between two years as the percentage change between the two years' annual averages. The only difference in methodology is that BLS applies this methodology to calendar years, and the Commission will apply it to 12-month periods.

Calculation of the annual limitation in this method involves three steps. First, a simple average CPI–U index (Recent Average) is calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files notice of its intentions to increase rates, and dividing the sum by 12. Then, a second simple average CPI–U index (Base Average) is similarly calculated by summing the 12 monthly CPI–U values preceding those used in the Recent Average calculation and dividing the sum by 12. Finally, the percentage change between the Recent Average and the Base Average is computed, using the following formula: Annual Limitation (Moving Average Method) = (Recent Average/ Base Average) − 1.

Example 1 illustrates the annual limitation calculation, using the moving average method, assuming that the Postal Service had filed a hypothetical notice of its intentions to increase rates during the third week of April 2006.[12]

[11] Testimony of Daniel C. Emens on Behalf of JPMorgan Chase & Co., July 9, 2007 (Emens Testimony).

[12] All CPI–U data is obtained from the BLS Web site at: *http://data.bls.gov/cpi-bin/surveymost.*

Example 1

(A)

April 2006 Notice Recent Average		
YEAR	MONTH	CPI-U MONTHLY INDEX
2005	April	194.6
2005	May	194.4
2005	June	194.5
2005	July	195.4
2005	August	196.4
2005	September	198.8
2005	October	199.2
2005	November	197.6
2005	December	196.8
2006	January	198.3
2006	February	198.7
2006	March	199.8
12-Month Average		197.0

(B)

April 2006 Notice Base Average		
YEAR	MONTH	CPI-U MONTHLY INDEX
2004	April	188.0
2004	May	189.1
2004	June	189.7
2004	July	189.4
2004	August	189.5
2004	September	189.9
2004	October	190.9
2004	November	191.0
2004	December	190.3
2005	January	190.7
2005	February	191.8
2005	March	193.3
12-Month Average		190.3

ANNUAL LIMITATION =

$$\frac{\text{April 2006 Notice Recent Average (A)}}{\text{April 2006 Notice Base Average (B)}} - 1 = \frac{197.0}{190.3} - 1 = 3.5\%$$

Example 1 assumes that rate filings are 12 months apart; that is, that the Postal Service filed its most recent previous notice for a rate increase in April 2006. This assumption can be adjusted in two ways depending on when the Postal Service files a notice of rate adjustment.

The first adjustment occurs when the Postal Service files a notice of rate adjustment less than one year after the previous adjustment. In this instance, if the calculation were to use 12 months of data, the Postal Service would benefit from double counting months of CPI data. This would violate the statutory limitation. To remedy this problem, a partial year limitation is calculated.

Example 2 calculates a partial year limitation. First, a simple 12-month average must be calculated using the most recently available 12 months of CPI–U data from the BLS Web site (Recent Average). Then the partial year limitation is calculated by dividing the Recent Average by the Recent Average from the most recent previous notice and subtracting 1. The formula is as follows: Partial Year Limitation = (Recent Average/Recent Average from most recent previous notice) − 1.

Still assuming that the Postal Service filed its first notice of rate adjustment in April of 2006 (Example 1), assume now that the Postal Service files its second hypothetical notice of rate adjustment in October 2006 (six months later). Example 2 shows how the partial year limitation will be calculated for the October 2006 rate adjustment.

Example 2

(C)

October 2006 Notice Recent Average		
YEAR	MONTH	CPI-U MONTHLY INDEX
2005	October	199.2
2005	November	197.6
2005	December	196.8
2006	January	198.3
2006	February	198.7
2006	March	199.8
2006	April	201.5
2006	May	202.5
2006	June	202.9
2006	July	203.5
2006	August	203.9
2006	September	202.9
12-Month Average		200.6

(D)

October 2006 Notice Base Average = April 2006 Notice Recent Average		
YEAR	MONTH	CPI-U MONTHLY INDEX
2005	April	194.6
2005	May	194.4
2005	June	194.5
2005	July	195.4
2005	August	196.4
2005	September	198.8
2005	October	199.2
2005	November	197.6
2005	December	196.8
2006	January	198.3
2006	February	198.7
2006	March	199.8
12-Month Average		197.0

PARTIAL YEAR LIMITATION =

$$\frac{\text{October 2006 Notice Recent Average (C)}}{\text{October 2006 Notice Base Average (D)}} - 1 = \frac{200.6}{197.0} - 1 = 1.8\%$$

A corresponding adjustment can be made should the Postal Service file a notice of rate adjustment more than 12 months after the last adjustment. This scenario provides no reason to alter the calculation of the annual inflation-based limitation, but does present a different concern; there are several months of CPI–U changes that the Postal Service may lose. The clear intent of the statutory provision allowing for recapture of unused rate authority is to encourage the Postal Service to whenever possible refrain from imposing the maximum permissible rate increases. If the Postal Service can delay imposing increases on the public, it should not be penalized. *See* proposed rule 3010.26(c). To address this concern, the interim unused rate authority will be added to the cumulative unused rate authority.

Still assuming that the Postal Service filed its first notice of rate adjustment in April 2006 (Example 1), assume now that the Postal Service files its second hypothetical notice of rate adjustment in July 2007 (15 months later). Example 3 illustrates how the price cap will be calculated for the July 2007 notice of rate adjustment, along with the calculation of the three months of interim unused rate authority. To calculate interim unused rate authority, divide the Base Average of the current notice by the Recent Average of the last notice and subtract 1. The formula to calculate the amount of interim unused rate authority is as follows: Interim Unused Rate Authority = (Base Average for Current Notice/ Recent Average for Last Notice) − 1.

Example 3

(E)

July 2007 Notice Recent Average		
YEAR	MONTH	CPI-U MONTHLY INDEX
2006	July	203.5
2006	August	203.9
2006	September	202.9
2006	October	201.8
2006	November	201.5
2006	December	201.8
2007	January	202.4
2007	February	203.5
2007	March	205.4
2007	April	206.7
2007	May	207.9
2007	June	208.4
12-Month Average		204.1

(F)

July 2007 Notice Base Average		
YEAR	MONTH	CPI-U MONTHLY INDEX
2005	July	195.4
2005	August	196.4
2005	September	198.8
2005	October	199.2
2005	November	197.6
2005	December	196.8
2006	January	198.3
2006	February	198.7
2006	March	199.8
2006	April	201.5
2006	May	202.5
2006	June	202.9
12-Month Average		199.0

ANNUAL LIMITATION =

$$\frac{\text{July 2007 Notice Recent Average (E)}}{\text{July 2007 Notice Base Average (F)}} - 1 = \frac{204.1}{199.0} - 1 = 2.6\%$$

INTERIM UNUSED RATE AUTHORITY =

$$\frac{\text{July 2007 Notice Base Average (F)}}{\text{April 2006 Notice Recent Average (C)}} - 1 = \frac{199.0}{197.0} - 1 = 1.0\%$$

APWU argues for cross-class application of unused rate authority and recommends a method of weighting the revenue. This cross-class application of unused rate authority would grant the Postal Service the ability to use unused rate authority from one class, and apply it to other classes of mail in later years. APWU Comments, April 6, 2007, at 9–10. Several parties assert that this would (1) be at odds with section 3622(d)(2)(C), which states that the annual limitations shall apply to a class of mail and defines unused rate authority in terms of an individual class of mail; (2) be inconsistent with the legislative history; and (3) merge multiple class-specific baskets into a single basket. *See* ANM/MPA Reply Comments, May 7, 2007, at 3–6; ANM/NAPM/NPPC Reply Comments, May 7, 2007, at 9–11; MOAA Reply Comments, May 7, 2007, at 11; Pitney Bowes Comments, April 6, 2007, at 9; and USPS Reply Comments, May 7, 2007, at 16.

The Commission agrees that unused rate authority for a given class of mail may only be applied to the class where it originated.

Finally, The McGraw-Hill Companies, Inc. (McGraw-Hill) suggests that the rules should include a method to reduce the price cap if the Postal Service performance levels deteriorate, or if the Postal Service places costly mail preparation requirements on mailers. *See* McGraw-Hill Reply Comments, July 30, 2007, at 6–7. During the Kansas City field hearings, witness Stumbo of Meredith Corporation expressed a similar concern:

> We would submit that the critical issues regarding cost shifting and service reduction are [sic] the rate-setting process must contain a mechanism to adjust rates to reflect the shift in cost from the Postal Service to private industry. In addition, the rules should contain methodology to adjust rates to reflect the diminished level of service the imposition of preparation rule changes or other means.

Transcript of Kansas City Field Hearing, June 22, 2007, at 40.

No commenter has suggested a method for applying such adjustments. The Commission is sympathetic to these concerns, yet finds the better course is to defer such considerations. The statute establishes a system of accountability through increased transparency. The Commission is developing separate rules providing for annual Postal Service reports that will include data on service achievement. Additionally, proposed rule 3020.91 requires the Postal Service to inform the Commission of changes that would alter the nature of a product through the imposition of preparation rule changes.

The Commission expects that the Postal Service will operate within both the letter and the spirit of the PAEA. For now, it is best to presume that the Postal Service will do so. If experience shows that additional regulations in this area are necessary to achieve the objectives of the legislation, the Commission is obligated to develop such regulations, or

recommend to Congress appropriate additional legislation.

Test for compliance with the annual limitation. Proposed rule 3010.20 states that the appropriate annual limitation shall be applied to a measure of the rates paid by mail sent in each class for which rate adjustments are to be made to determine whether planned rates are consistent with the annual limitation.

39 U.S.C. 3622(d) requires that the system for regulating rates and classes for market dominant products include a limitation on the percentage increase in rates. To calculate the percentage change in an individual rate is a simple matter, but section 3622(d)(2)(A) stipulates that the restriction be applied at the class level. Therefore, to determine compliance in the context of a pre-implementation compliance review of a notice of rate adjustment, it is necessary to develop rules that provide a means of calculating the aggregate percentage change in rates for each class. To accomplish this, weights (in the form of billing determinants) must be applied to the set of rates that comprise a class.

Postal Service proposal. The Postal Service proposes to apply the most recent available billing determinants to the current rates, then apply the same billing determinants to the new rates and compare the resulting revenues to determine the change in rates for a class. As acknowledged by the Postal Service, this is not ideal because an annual rate cycle combined with the need for advance notice dictates that the billing determinants will not correspond to a single set of rates, but will reflect mailer behavior for part of a year at the current rates and part at the previous rates. Postal Service Reply Comments, May 7, 2007, Appendix C. Rather than debating the rates (current or new) to which the ideal billing determinants would correspond, the parties' comments have focused on more practical considerations regarding the use of historical billing determinants instead of forecast billing determinants.

Parties' positions. On this, there is near universal support for the Postal Service's proposed approach, or some slight variation thereof. Pitney Bowes, OCA, MOAA, ANM/MPA, APWU, PostCom, Advo, and JPMorgan/Chase all support the use of historical billing determinants as weights in their comments. The primary rationale for this position is that historical data are far less likely to be controversial than forecasts, and given the limited time and public participation for the review of notices of rate adjustment, simplicity and speed of analysis should take precedence.

There is some disagreement regarding the treatment of classification changes and negotiated service agreements. The Postal Service proposes to make adjustments to the historical billing determinants to incorporate the effects of classification changes, such as the creation or elimination of rates. It proposes to use known mail characteristics and reasonable judgments to make the necessary adjustments. *See* Postal Service Comments, June 18, 2007, at 7–10, *inter alia.* This proposal is supported by MOAA. *See also* MOAA Comments, April 6, 2007 at 4–5; ANM/MPA Comments, May 7, 2007, at 1–2; and APWU Comments, June 18, 2007, at 3–4.

PostCom takes the position that the effects of classification changes are outside the scope of the Commission's pre-implementation review of a notice of rate adjustment. It argues that the effects of such changes on compliance with the price cap may only be determined in a *post hoc* review of the new rates. PostCom concludes that, ''any attempt by the Commission to assess the effects of a change in rate design at the time that the change is proposed will entail a re-introduction of the old cost of service methods that the Commission has used under the Postal Reorganization Act, including the attempt to establish a test year, the reintroduction of roll-forwards and volume and revenue forecasts, and all of the uncertainty, controversy and confusion that these methods entail.'' PostCom Comments, June 18, 2007, at 4–5.

Commission analysis. The Commission's proposed rules calculate the percentage change in rates using the most recent available billing determinant as weights. As many parties point out, any attempt to develop a forecast of billing determinants would likely be controversial and complex, and a worthwhile analysis and resolution cannot realistically be achieved in the context of a pre-implementation review under section 3622(d)(1)(C).

The rules also instruct the Postal Service to make reasonable adjustments to the billing determinants to account for the effects of classification changes. The Postal Service has stated that such adjustments will typically be straightforward and based on known mail characteristics. Any adjustments are to be fully explained by the Postal Service at the time of the notice.

The Commission recognizes that the pre-implementation method of calculating the percentage change in rates in the proposed rules is not a perfect measure of what the actual change in rates will be. The billing determinants to be used will likely not correspond to a single set of rates, and adjustments for classification changes will be imperfect. Some commenters suggest that the after-the-fact review will be the most effective means of ensuring compliance with the rate cap. *Id.* at 4–6; *see also* Transcript of Wilmington Field Hearing, July 9, 2007, at 47. (Emens).[13] The statute requires the Commission to monitor the effectiveness of these rules and consider modifications to improve their effectiveness as events warrant.

Proposed rule 3010.23, captioned ''Calculation of percentage change in rates,'' explains in paragraph (b) that for each class of mail, the percentage change in rates is calculated in three steps. The first step involves multiplying the volume of each rate cell in the class by the current rate for that cell and summing the resulting products. (In the case of seasonal or temporary rates, the most recently applied rate shall be considered the current rate.) The second step involves multiplying the same set of rate cell volumes by the corresponding planned rate for each cell and summing the resulting products. The third step involves calculating the percentage change in rates by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage. Paragraph (c) sets out the formula.

Treatment of volume associated with negotiated service agreements. Advo and Pitney Bowes advocate the exclusion of negotiated service agreements from the determination of percentage changes in rates. They assert that including the lower rates offered to negotiated service agreement partners will allow for offsetting larger increases for non-negotiated service agreement mail, thus undermining the price cap protection afforded to non-participating mailers. *See* Advo Comments, June 18, 2007, at 4; Pitney Bowes Comments, June 18, 2007, at 4. The Postal Service disagrees, arguing that in certain situations, some negotiated service agreement mailers may pay prices higher than list prices. If this occurs, excluding negotiated service agreements from the calculation of change in revenue would deny non-negotiated service agreement mailers the opportunity for potentially lower

[13] *See also* Campbell James, An Analysis of Provisions of the Postal Accountability and Enhancement Act Relating to the Regulation of Postal Rates and Services. August 3, 2007, at 52–55.

increases. Postal Service Reply Comments, July 3, 2007, at 6–7.

The proposed rules exclude the effects of negotiated service agreements from the calculation of percentage change in rates. The foundational argument in support of negotiated service agreements is that they can be structured to benefit the participating mailer and the Postal Service, while not harming (and hopefully, benefiting) non-participating mailers. Pitney Bowes and Advo are correct in their conclusion that including negotiated service agreements in the test for compliance with the rate cap may lead to rates for non-participating mailers that exceed the rate cap. This would undermine the rationale for permitting negotiated service agreements.

Proposed section 3010.24 addresses volume associated with negotiated service agreements. Paragraph (a) provides that mail volumes sent at non-tariff rates under negotiated service agreements are to be included in the calculation of percentage change in rates as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability, the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates. Paragraph (b) requires related support in the form of identification and explanation of all assumptions made with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and the rationale for assumptions.

Limit on application of banking exception. Proposed rule 3010.25 addresses certain limits on unused rate adjustment authority. It provides that these adjustments may only be applied together with inflation-based limitation rate adjustments or when inflation-based limitation rate adjustments are not possible. It further provides that unused rate adjustment authority may not be used in lieu of an inflation-based limitation rate adjustment.

H. Overview of Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

Section 3622(c)(10) of the PAEA requires consideration of the desirability of special classifications for both postal users and the Postal Service. Subsections 3622(c)(10)(A) and (B) mandate that such agreements must improve the net finances of the Postal Service or enhance operational performance while not causing unreasonable harm to the marketplace. Section 3622(d)(1)(C) further details the review period that will begin ''not later than 45 days before the implementation'' of any agreement made under subsection (c)(10). These subsections of the PAEA provide the basis and criteria for evaluating and approving negotiated service agreements.

In their comments, parties have expressed a range of views on how the Commission should implement the legislative framework for negotiated service agreement regulation. The level of review described in these diverse comments can be summarized into two groups: Parties who consider the current negotiated service agreement process amenable with the PAEA, and parties who assert that the PAEA calls for a significantly streamlined process.

Parties who support a continuation of the current process, and in some instances, the regulations as currently written, include Valpak, NAA, Jon Mulford Associates, and APWU. This viewpoint was summarized by NAA, stating

> [t]he Commission should continue to adhere to its established, balanced approach to considering special classifications in the form of negotiated services agreements or niche classifications. This includes conducting a thorough public and prior review, which results in a determination that the proposed mailer-specific agreement may or may not take effect. In keeping with the new statutory approach giving the Commission the final say, that determination should be subject to judicial review.

NAA Reply Comments, May 7, 2007, at 13.

Parties supporting a simplified and minimal review of negotiated service agreements include Advo, Discover Financial Services, LLC (DFS), MOAA, Pitney Bowes, and Time Warner. This viewpoint was summarized by Pitney Bowes stating, ''The elimination of advance, on-the-record Commission review of NSAs should significantly enhance the Postal Service's ability to meet the needs of mailers * * *.'' Pitney Bowes Reply Comments, May 7, 2007, at 13.

The Commission finds that the statute requires a regulatory approach that combines elements of the divergent views among parties. The legislation seeks to provide the Postal Service with added flexibility to enhance producer and consumer surplus through negotiated service agreements. The proposed rules will decrease the administrative and economic burden in implementing such agreements. However, arguments such as those presented in the comments of Jon Mulford, stating ''[t]he Commission should insure that periodic audits verify that claimed benefits persist through the duration of the NSA'' also reflect the policies of the PAEA. *See* Jon Mulford Associates Comments, March 14, 2007, at 4. Combining flexibility and accountability is the essence of the new legislation, and the Commission attempts to achieve the proper balance in the subpart D rules.

This subpart consists of four rules. Proposed rule 3010.40 expresses the Commission's objective in administering the implementation of negotiated service agreements. It clarifies that this objective is directly tied to statutory requirements in 39 U.S.C. 3622(c)(10) mandating that special classifications either improve the net financial position of the Postal Service or enhance the performance of operational functions and do not cause unreasonable harm to the marketplace.

Timing of notice and review. Proposed rule 3010.41 addresses procedures. Paragraphs (a)(1) and (2) reflect the requirements for Type 2 changes that public notice and notice to the Commission occur not later than 45 days prior to the intended rate implementation date.

Contents of filing. Proposed rule 3010.42 addresses the contents of a notice in support of a negotiated settlement agreement. It indicates that this should include, at a minimum, a copy of the negotiated service agreement and a statement identifying all parties and a description explaining the operative components. It is also to include the estimated mailer-specific costs, volumes and revenues of the Postal Service absent the implementation of the agreement; the estimated mailer-specific costs, volumes and revenues of the Postal Service which result from implementation; and an analysis of the effects of the agreement on the contribution to institutional costs from mailers not party to the agreement. If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

The Postal Service is also to identify each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such agreement. Furthermore, it is to provide details regarding any and all actions to assure that the agreement will not result in unreasonable harm to the marketplace.

Finally, the Postal Service is to collect and provide annual data that are intended to enable the Commission and interested persons to evaluate whether each negotiated service agreement has met, and is likely to meet in the future, the expectations that caused the Postal Service to enter the agreement. It is understood that not every agreement will meet Postal Service expectations. Nonetheless, continuing periodic review is the best way to assure that flaws in Postal Service projection techniques are recognized and remedied.

I. Overview of Subpart E—Rules for Rate Adjustments in Exigent Circumstances (Type 3 Rate Adjustments)

The PAEA also requires that the Commission establish procedures to allow rate adjustments in excess of the annual limitation on an expedited basis due to either extraordinary or exceptional circumstances, provided:

> [T]here is not sufficient unused rate authority as defined in 39 U.S.C. 3622(d)(2)(C); and
>
> [T]he Commission determines, after notice and opportunity for a public hearing and comment, and within 90 days after any request by the Postal Service, that such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.

See 39 U.S.C. 3622(d)(1)(E).

There are several significant differences between a Type 3 change and the other three types. First, based on the legislative history, a Type 3 change is expected to be an atypical occurrence, while the other types are considered more routine. Types 1-A, 1-B and 2 changes follow the streamlined 45-day notice-and-review process, while a Type 3 filing occurs pursuant to a request and a hearing, with up to 90 days for consideration.

Commenters addressing implementation of the exigency clause in 39 U.S.C. 3622(d)(1)(E) focus mainly on the extent to which Commission rules should define ''exigent circumstances'' for purposes of rate adjustments; the related possibility, if the definition is too broad, that frequent requests for exigent increases could undermine the intended discipline of the price cap mechanism; and the nature and extent of public participation in exigent request filings.

The Postal Service describes the PAEA's exigency clause as a safety valve for those ''extraordinary or exceptional situations in which the [price] cap cannot be met even through honest, efficient, and economical management.'' Postal Service Comments, April 6, 2007, at 16. It does not address the content of an exigent rate filing or the role of the public, but asserts, with respect to defining exigent circumstances, that it is not necessary or prudent for the Commission to attempt to specify in this rulemaking the situations that might be covered in advance of an actual need to do so. Postal Service Reply Comments, May 7, 2007, at 15.

Pitney Bowes and Time Warner share the Postal Service's view that the Commission should not attempt to define qualifying circumstances at this time. Pitney Bowes suggests addressing the question on a case-by-case basis as circumstances arise. Pitney Bowes Comments, April 6, 2007, at 10. Similarly, Time Warner says:

> * * * the Commission need not and should not attempt to determine a substantive standard for granting Postal Service requests under the exigent circumstances provision (other than the standard set out in § 3622(d)(1)(E) itself) until presented with the concrete circumstances attending an actual Postal Service request under that provision; the kind of judgment that the Commission is called on to make in deciding whether to grant such a request cannot be exercised well in the abstract or upon hypotheticals; moreover, to the extent that such a standard might err on the side of leniency, it would undermine the discipline that the price caps are intended to instill, and to the extent that it might err on the side of stringency, it could create perverse incentives to find alternative ways of circumventing the caps.

Time Warner Comments, April 6, 2007, at 22–23.

Several other commenters echo Time Warner's concern about the relationship between the exigency clause and the price cap mechanism. The Alliance of Nonprofit Mailers, National Association of Presort Mailers, and National Postal Policy Council jointly state: ''* * * the exigency provision for ''extraordinary or exceptional'' services must be drawn very narrowly; otherwise the availability of this mechanism will undermine the index as a constraint on costs and efficiency.'' ANM/NAPM/NPPC Comments, April 6, 2007, at 2 and 11; *see also* ANM/NAPM/NPPC Reply Comments, May 7, 2007, at 8. They urge the Commission to make it clear that exigent financial consequences should have to be large enough to threaten the Postal Service's financial integrity, and must not be due to an unreasonable failure to hedge and insure against risk or any other form of inefficient or uneconomical management. ANM/NAPM/NPPC Comments, April 6, 2007, at 11. Randy Stumbo, representing Meredith Corporation, says: ''An easy out provided by a liberal exigency provision would seriously damage the cost control incentive created by a rate cap.'' Stumbo Testimony at 3.[14]

Don Hall, Jr., representing Hallmark, also cautions: ''* * * [I]f the exigency provision is over-used, mail users in all classes will have to conclude that the price cap scheme is not going to succeed—and, as the Act also provides, after 10 years this Commission will have to devise something better.'' Hall Testimony at 7.[15]

Mr. Hall also asserts that it is imperative that the Commission clarify what circumstances warrant the rate cap to be pierced and to make certain that the Postal Service exhaust all other resources provided by its ability to retain earnings before seeking rate increases above the cap. *Id.* at 12.

Mr. Stumbo seeks more specific direction, as he suggests:

> While it seems premature and imprudent to explicitly define in the abstract the events under which exigency may be exercised, it is necessary to define what it is not. Attributable cost shortfalls at the class or subclass level do not constitute exigent circumstances. Nor should the exigency clause be used to re-apportion rates in any way.

Stumbo Testimony at 3.

The Magazine Publishers Association (MPA) and the Alliance of Nonprofit Mailers (ANM) agree that the failure of a class to cover its attributable costs should be affirmatively identified as not qualifying as an exigent circumstances. ANM/MPA Comments, April 6, 2007, at 11–12. Time Warner, however, claims that the Commission need not and should not decide that failure of a class to recover attributable costs could never constitute exigent circumstances justifying above-cap increases. Time Warner Reply Comments, May 2, 2007, at 33.

The Greeting Card Association (GCA) suggests that the Commission could clarify the scope of the exigency clause by defining ''extraordinary or exceptional circumstances'' to exclude matters that, under the Postal Reorganization Act of 1970, would have been dealt with under the provision for contingencies. GCA Comments, April 6, 2007, at 9. It says the Commission should provide guidance on how the nature of the ''extraordinary or exceptional'' circumstances motivating the adjustment relates to the allocation

[14] Testimony of Randy Stumbo, Director of Distributoin and Postal Affairs for Meredith Corporation, Postal Regulatory Commission Field Hearing, Kansas City, June 22, 2007 (Stumbo Testimony).

[15] Testimony of Don Hall, Jr., President and CEO, Hallmark Cards, Inc., June 22, 2007 (Hall Testimony).

of burdens among mail users. *Id.* at 11–12. GCA also concludes, after addressing the potential impact of external and internal events, that the Commission:

> * * * should make clear in setting up the subparagraph (E) [exigency clause] procedures that the Postal Service, in first presenting its proposed adjustment, must explain fully (i) the nature of the extraordinary or exceptional circumstances claimed to justify the rate change, and (ii) the theory on which it considers its proposed rate changes appropriate to reflect (i).

Id. at 13. Moreover, it asserts that this explanation should be required to be part of the initial filing, as the Commission must make its required findings in 90 days or less. *Id.*

Commenters differ on the nature and extent of public comment. Advo, for example, simply notes, in contrasting the types of public input called for in the PAEA, that the statute requires that the Commission provide ''notice and opportunity for public hearing and comment,'' but does not address the nature and scope of the public hearing. Advo Comments, April 6, 2007, at 5. GCA and Time Warner note that the PAEA provides an opportunity for public participation when the Postal Service files an exigent request, but do not contend that this mandates formal trial-type hearings. GCA, instead, asserts that the procedures must provide ''some opportunity'' for parties to raise challenges to the bases of the proposed increase, and that the Postal Service must overcome such challenges to meet the burden of justifying exigent increases. GCA Comments, April 6, 2007, at 14–15. Others suggest that the PAEA's reference to an ''opportunity for public participation and comment'' means that the Commission must establish trial-type proceedings for exigent requests. *See, for example*, ANM/NAPM/NPPC Comments, May 7, 2007, at 11.

Discussion. The Commission appreciates commenters' concerns that the exigency clause, if invoked too frequently, could undermine the statutory price cap mechanism. At this point, it should be assumed that the Postal Service's intent is to honor the clear import of the PAEA's overarching ratesetting philosophy that exigent requests are meant to be a safety net for dealing with unforeseeable emergencies. The Commission believes that the commenters' concerns can largely be addressed by requiring, as proposed rule 3010.61 does, that the Postal Service provide focused explanation in support of any exigent request. This includes a full discussion of the circumstances giving rise to the filing, the reasons why the requested increases are necessary, and why the specific proposed increases are reasonable and equitable as between the types of users of market dominant products. The Postal Service will be required to provide considerable additional context, such as an explanation of how long the exigent increases are intended to be in effect, the circumstances under which rescission of the increases might occur, a justification addressing the foreseeability or avoidability of the circumstances giving rise to the request, and other information that would assist the Commission in reaching a decision. The Commission reserves the right, in proposed rule 3010.62, to require the Postal Service to clarify or further supplement its request. These provisions do not explicitly define ''exigent circumstances,'' and unmistakably convey the message that exigent requests are indeed ''extraordinary or exceptional.''

The proposed rules provide that upon receipt of an exigent request, the Commission will conduct an expedited review, including a public hearing, that allows for resolution within 90 days. The rulemaking record is relatively slim on this aspect of PAEA implementation, perhaps due to the focus on filings considered more routine. The Commission has carefully considered the nature and extent of public input for exigent requests, and preliminarily has concluded that while the PAEA would not preclude reviving the trial-type proceedings that held sway in the past, it also does not require them. The fact that the statute does not explicitly refer to a hearing ''on the record,'' which is universally associated with trial-type hearings under the Administrative Procedure Act (APA), provides support for this conclusion. The drafters were well aware that the system they were replacing had included APA-style formal proceedings, and could have mandated equivalent proceedings for exigent requests by including an unmistakable reference to ''on the record'' proceedings, but did not. Additional support is drawn from the period of time (90 days) allowed for review, which is inconsistent with overly-elaborate hearings; and as the Postal Service and some joint commenters suggest, the likelihood that issues will not simply require adjudication of facts, but also may involve significant policy considerations. Given these considerations, the Commission proposes a written process, without cross-examination, to facilitate public participation, coupled with public hearings at which one or more responsible Postal Service official would appear for questioning by the Commission. This mechanism strikes an appropriate balance between assuring transparency and accountability in keeping with the statute, while facilitating completion of review within 90 days. These provisions appear in proposed subpart E.

III. Competitive Products

Subchapter II of chapter 36 of 39 U.S.C., 39 U.S.C. 3631–34, sets forth the provisions applicable to competitive products, which, pursuant to § 3631(a), initially include priority mail, expedited mail, bulk parcel post, bulk international mail, and mailgrams.[16] Section 3631(c) provides that ''[m]ail matter referred to in [§ 3631(a)] shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.'' In Order No. 15, the Commission solicited the parties' views on ''mail matter'' comprising each of the foregoing types of mail and on the meaning of the phrase ''mail classification schedule.'' PRC Order No. 15, May 17, 2007, at 6. Several parties addressed these issues. *See, e.g.*, Postal Service Comments, June 18, 2007, at 11–16; UPS Comments, June 18, 2007, at 2–4; OCA Comments, June 18, 2007 at 22–27; and PSA Comments, June 18, 2007, at 1–3.

A. Mail Classification Schedule

OCA and UPS contend that ''mail classification schedule'' as used in section 3631(c) refers to the Domestic Mail Classification Schedule (DMCS).[17] For several reasons, the Commission is not persuaded by this construction. First, section 3631(a) includes mail matter not subject to the DMCS, i.e., bulk international mail. Second, when Congress intended that the DMCS be used, it was specific. *See* section 3622(d)(2)(A), applying the price cap limit to ''a class of mail, as defined in the Domestic Mail Classification Schedule as in effect on the date of enactment of the [PAEA].'' Thus, the failure to specify the DMCS in section 3631(c) suggests that something else is intended. Third, while the DMCS may be useful in initially determining mail matter comprising the competitive products, the mail classification

[16] Pursuant to section 3642, the Commission may change the lists of competitive products under section 3631 and market dominant products under section 3621 by adding new products to or removing products from the lists, or transferring products between the lists.

[17] OCA Comments, June 18, 2007, at 23; UPS Comments, June 18, 2007, at 2.

schedule has a continuing, if somewhat new, role under the statute. Among other things, the mail classification schedule incorporates international mail (both single-piece and bulk) and is subject to section 3642, which authorizes the Commission to modify the makeup of competitive and market dominant products.

The Postal Service recognizes that the PAEA contemplates a mail classification schedule, suggesting that it would contain ''a level of detail equivalent to the current DMCS,'' with additional language added to account for international mail. Postal Service Comments, June 18, 2007, at 16. The Postal Service advocates that separate classification schedules be established for market dominant and competitive products. *Id.*

In supplemental comments, the Postal Service offers its views on what it calls the classification process.[18] Regarding competitive products, it argues that the Commission has no role in developing or overseeing the mail classification schedule other than determining, pursuant to section 3642, what products are in the competitive category of mail. *Id.* at 14. The Postal Service asserts that ''the Governors will maintain the ''Competitive Products Classification Schedule,''' with changes made pursuant to section 3632(b). *Id.* The Commission interprets its responsibilities under the PAEA differently, concluding that the mail classification schedule falls within its purview.

The Postal Service states that ''the PAEA clearly vests classification authority with the Governors[.]'' *Id.* To a point, this statement is unobjectionable. Notably, however, it overlooks limitations on the Governors' authority, namely, that it is subject to subchapter II (of chapter 36 of title 39) and regulations promulgated by the Commission under section 3633. Moreover, the Governors' authority to change rates or classes (pursuant to section 3632) cannot reasonably be read to encompass the wholly separate power to develop and maintain a mail classification schedule for competitive products. If the Governors were intended to have such authority, there would be no reason for the process mandated by section 3631 or for subjecting the Governors' authority to change rates or classes to the Commission's regulations. Nor would there be any reason for the separate provision, section 3642, for establishing new products.

Section 3631(a) identifies the initial list of competitive mail matter, including priority mail, expedited mail, bulk parcel post, and bulk international mail.[19] None of these terms is defined in the statute. To establish what each of the foregoing means section 3631(c) instructs that the ''[m]ail matter referred to in subsection (a) shall, for purposes of this subchapter, be considered to have the meaning given to such mail matter under the mail classification schedule.'' Pursuant to this rulemaking, the Commission will identify the mail matter, including the products, in the (competitive) mail classification schedule that initially comprise each type of mail listed in section 3631(a). This process is integral to the Commission fulfilling its responsibilities under the PAEA, which requires, among other things, that each competitive product cover its attributable costs.

Commission maintenance of the mail classification schedule does not deprive the Governors of any flexibility to change rates or classes or offer new products. It does, however, assure non-discriminatory service and transparency in a manner contemplated by the statute.[20] The mail classification schedule identifies the products subject to the Commission's oversight, a task which does not fall to the Governors.[21]

B. Competitive Mail Matter

Not unreasonably, parties addressing the issue define mail matter, in the first instance, by reference to the existing materials, namely, the DMCS and International Mail Manual (IMM). This works reasonably well for ''priority mail'' and ''expedited mail,'' both of which appear in the DMCS. Thus, for example, the Postal Service suggests that ''priority mail'' consists of mail within the ''Priority Mail'' subclass (DMCS section 223) and ''expedited mail'' consists of Express Mail entered under the ''Expedited Mail Classification Schedule'' (DMCS section 110 *et seq.*). Postal Service Comments, June 18, 2007, at 11–12.[22]

For purposes of promulgating the initial regulations applicable to competitive products, the Commission agrees that, at a minimum, mail matter qualifying as priority mail and expedited mail is that described in the DMCS. There are three features to this initial classification: each represents only domestic mail; each is a separate product; and the rates for each product are rates of general applicability.

OCA notes that the listing of priority mail and expedited mail in section 3631(a) does not distinguish between domestic and international mail or between single-piece and bulk. OCA Comments, June 18, 2007, at 23. Thus, it asserts that priority mail and expedited mail should include both domestic and international in the competitive mail classification schedule.[23] This position is not unreasonable and the Commission proposes to include outbound international priority mail (Priority Mail International) and expedited mail (Global Express Guaranteed and Express Mail International) as separate products within the priority mail and expedited mail classifications respectively. As discussed below, inbound shipments would be classified as market dominant.

Reference to the DMCS and IMM works less well for ''bulk parcel post'' and ''bulk international mail'' since neither is clearly delineated.[24] The parties addressing the issue agree generally that ''bulk parcel post'' consists of the following mail matter: Parcel Select (DMCS sections 521.23–26); Parcel Select Return Service (DMCS sections 521.27–28); Inter-BMC qualifying for OBMC and BMC discounts (DMCS sections 521.41–42); and Inter-BMC and Intra-BMC qualifying for a barcode discount (DMCS section 521.5). *See* Postal Service Comments, June 18, 2007, at 12–13; PSA Comments, June 18, 2007, at 3;

[18] Postal Service Supplemental Comments, June 19, 2007. The bulk of these comments relate to market dominant products, with the Postal Service suggesting a framework for classification changes and development of a mail classification schedule. *Id.* at 1–14.

[19] The list also includes ''mailgrams,'' a service which was terminated on August 17, 2006. *See* Postal Bulletin 22192, October 26, 2006, at 5; *see also* letter from Daniel J. Foucheaux, Jr. to Steven W. Williams, Secretary, Postal Rate Commission, filed November 2, 2006.

[20] The Commission concurs with the Postal Service's position that the mail classification schedule should provide a level of detail similar to the DMCS. The Commission also agrees with the Postal Service that maintaining separate classification schedules for market dominant products and competitive products is reasonable. Nonetheless, for administrative convenience and clarity, the Commission intends to initially combine the separate lists for market dominant and competitive products in a single mail classification schedule.

[21] The mail classification schedule also serves as the source of the list of competitive products maintained by the Commission pursuant to section 3642.

[22] *See also* OCA Comments, June 18, 2007, at 22; PSA Comments, April 6, 2007, at 8, n.8; PSA Comments, June 18, 2007, at 2; and UPS Comments, June 18, 2007, at 2.

[23] *Id.* Elsewhere, however, OCA appears to suggest that other than two ''bulk international mail'' services all remaining international mail should be categorized as market dominant. *Id.* at 26.

[24] As PSA points out, the listing of ''Bulk Parcel Post'' among the rate categories of the Parcel Post subclass (DMCS section 521.3) is an anachronism since there is no current rate associated with that rate category which preceded the Parcel Select rate categories. PSA Comments, June 18, 2007, at 2.

OCA Comments, June 18, 2007, at 24; and UPS Comments, June 18, 2007, at 2–3.

The Commission agrees with the consensus view that ''bulk parcel post'' consists of the following mail matter: Parcel Select, Parcel Return Service, and Parcel Post mail qualifying for OBMC, BMC, and barcode discounts. Initially, therefore, bulk parcel post would be comprised of these three products.

UPS and the Postal Service also suggest that bulk parcel post include additional mail matter. UPS would include mail entered as Inter-BMC or Intra-BMC Parcel Post by commercial mailers in quantities greater than one. UPS Comments, June 18, 2007, at 3; *see also* UPS Reply Comments, July 3, 2007, at 1. PSA opposes UPS's proposal as contrary to the commonly accepted use of the terms ''bulk'' and ''single-piece'' in the DMCS. PSA Reply Comments, July 3, 2007, at 2–3.

To qualify for various current Parcel Post discounts, mailers must deposit at least 50 properly prepared pieces. *See, e.g.*, DMCS sections 521.23–26 and 521.41–42. This minimum quantity is a prerequisite for mailing at discounted (or non-single-piece) rates. UPS offers no justification for reducing that minimum volume threshold to two. Accordingly, the Commission will not adopt that suggestion.[25]

The Postal Service suggests that ''bulk parcel post'' include Inter- and Intra-BMC Parcel Post pieces if postage is paid using a Merchandise Return Service permit. Postal Service Comments, June 18, 2007, at 12–13. Merchandise Return Service is a special service enabling the permit holder to authorize a mailer to mail parcels, including Parcel Post mail, with the postage and fees paid by the permit holder. Merchandise Return Service is also available for sending First-Class Mail parcels. No party commented on this proposal specifically.[26]

Although the proposal has some appeal, the Commission will not adopt it at this juncture. Under the PAEA, special services are classified as market dominant as are First-Class Mail parcels. The availability of Merchandise Return Service as both a market dominant and competitive service raises practical difficulties that are unexplored in this docket. Moreover, there may well be other special services that would be better categorized as competitive. Thus, to consider one in isolation may lead to results with unintended consequences. The better practice is to utilize the procedures for transferring items between the market dominant and competitive product lists once these lists have been established as specified by Congress in the PAEA.

The parties' attempts to define the term ''bulk international mail'' are handicapped by the lack of a long-standing mail classification schedule. Instead, they turn to the IMM for guidance. It is a useful tool, but does not eliminate uncertainty surrounding the meaning of the term ''bulk international mail.'' Based on the parties'' comments, there appears to be little dispute that, at a minimum, bulk international mail consists of the following:[27] International Priority Airmail Service (IPA), which is available to bulk mailers of all international letter items (IMM section 292); International Surface Airlift Service (ISAL), which is a bulk mailing system for the delivery of letter items (IMM section 293); and International Customized Mailing Agreements (ICMs), which are mailer-specific agreements subject to minimum revenue or quantity requirements (IMM section 297).[28] There is, however, some controversy over the characterization of the remaining international mail services.

The Postal Service suggests that bulk international mail should be interpreted to include ''multi-item mailings tendered by a single mailer.''[29] The Postal Service indicates that multiple quantities may be satisfied by volume commitments or other types of annual guarantees. *Id.* at 13. Thus, in addition to the foregoing international services, the Postal Service proposes that the following be characterized as bulk international mail: Global Bulk Economy, which it indicates provides for surface transportation of bulk First-Class Mail international items; Global Direct, which it indicates provides for direct entry of bulk mailings sent through the Postal Service bearing the indicia, postal markings, and return address of the destination country; and direct sacks of printed matter sent to a single foreign addressee, also known as M-bags. *Id.* at 14.[30]

No party filed comments opposing the Postal Service's view of bulk international mail.[31] UPS agrees with it. UPS Reply Comments, July 3, 2007, at 1. For purposes of promulgating these initial regulations, the Commission proposes to define bulk international mail by reference to bulk commercial services, which may be satisfied by volume commitments or other types of annual guarantees. This would include IPA, ISAL, ICMs, and M-bags.[32] The Commission proposes to define IPA, ISAL, and M-bags as separate products and, at least initially, each ICM as a product.

Regarding international mail determined by the Commission to be a competitive product, the PAEA amends title 39 by adding section 407(e)(2) as follows:[33]

With respect to shipments of international mail that are competitive products within the meaning of section 3631 that are exported or imported by

[25] Should experience prove otherwise, mail matter defined as single-piece parcel post may, if appropriate, be transferred to the competitive products classification pursuant to section 3642.

[26] In its reply comments, UPS notes that it agrees generally with the Postal Service's definition of bulk parcel post. UPS Reply Comments, July 3, 2007, at 1.

[27] *See* Postal Service Reply Comments, May 7, 2007, at 32–33; Postal Service Comments, June 18, 2007, at 13–14; UPS Comments, June 18, 2007, at 4; OCA Comments, June 18, 2007, at 26; and PSA Comments, April 6, 2007, at 8, n.8; *see also* Pitney Bowes Comments, June 18, 2007, at 12–13.

[28] OCA contends that ICMs involving single-piece international mail should be characterized as a market dominant product. OCA Comments, June 18, 2007, at 56–57.

[29] Postal Service Comments, June 18, 2007, at 13. In an earlier round of comments, the Postal Service endorsed the views of PSA and the International Mailers' Advisory Group (IMAG) that certain single-piece international mail should be categorized as competitive products, but on different grounds, namely, that the products, *e.g.*, Global Express Guaranteed, Priority Mail International, and Express Mail International, are ''subject to fierce competition[.]'' Postal Service Reply Comments, May 7, 2007, at 32. In its more recent comments, the Postal Service's position on what constitutes bulk international mail appears to be limited to multi-item mailings tendered by a single mailer. See Postal Service Reply Comments, July 3, 2007, at 38–39. As an exception to this, the Postal Service indicates that because costs and revenues associated with Global Package Discount service are not separately collected, Express International Mail would need to be categorized as a competitive product. Postal Service Comments, June 18, 2007, at 15, n.17.

[30] In its discussion of ICMs, the Postal Service refers to Global Shipping Solutions and Global Package Discounts. Postal Service Comments, June 18, 2007, at 15, *see also id.* at n.17. Whether these are separate services or marketing programs in the form of ICMs is unclear. In its comments, the Postal Service should clarify their status.

[31] As noted above, in earlier comments OCA contends that an ICM involving single-piece international mail, such as Priority Mail International, should be categorized as a market dominant product. OCA Comments, June 18, 2007, at 56–57.

[32] The Postal Service identifies Global Bulk Economy and Global Direct as candidates for inclusion in the bulk international mail category. Postal Service Comments, June 18, 2007, at 15. It indicates that these services are available through an ICM. Whether these services are available only as an ICM or if they represent a separate category of international mail similar to IPA and ISAL is unclear. In its comments, the Postal Service should clarify their status.

[33] The Express Delivery & Logistics Association filed a white paper concerning section 407(e) taking issue with the Postal Service position on inbound mail. White Paper by Express Delivery & Logistics Association Regarding Implementation of Section 405 of the Postal Accountability and Enhancement Act of 2006, July 20, 2007, at 2. *See also* FedEx Comments, April 6, 2007, at 4–5.

the Postal Service, the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies.

Section 407(e)(1) defines the term ''private company'' as one ''substantially owned or controlled by persons who are citizens of the United States.'' Thus, the Commission's findings regarding international mail classified as competitive products are relevant to the application of customs and related laws to the importation and exportation of such shipments, requiring that such laws be applied ''in the same manner to both shipments by the Postal Service and similar shipments by private companies.'' Regarding outbound international mail classified as competitive products, *e.g.*, IPA, ISAL, and ICMs, section 407(e)(2) would apply to shipments by the Postal Service and similar shipments by private companies.[34]

Regarding inbound international mail, there are two issues. First, the demarcation between bulk and single-piece international mail is less clear. The Universal Postal Union (UPU) identifies three types of mail: Letter Post, Express, and Parcel Post. The issues of inbound international mail have not been addressed sufficiently to enable the Commission to determine what inbound international mail qualifies as ''bulk international mail.'' Given the UPU's designations, one possibility would be to classify Letter Post as market dominant with the other types of mail classified as competitive products. The Commission, however, has no data indicating that either Express or Parcel Post is properly considered to be ''bulk international mail.''

Second, it is not apparent that classifying any inbound international mail as a competitive product has the same significance it does for outbound mail. To be sure, section 407(e) applies to the importation of shipments deemed competitive. More specifically, however, it applies to such shipments by the Postal Service and private companies owned by U.S. citizens. The Postal Service does not operate ETOEs (extra-territorial offices of exchange). Thus, there are no foreign-originating mail shipments by the Postal Service. Currently, shipments of inbound mail are handled by foreign posts and by private carriers. Foreign posts are not defined as private companies for purposes of section 407(e). In addition, although the Postal Service receives inbound mail from foreign posts at various customs locations, whether such mail is, within the meaning of section 407(e), ''imported by the Postal Service'' is unclear. Finally, even if shipments received by the Postal Service from foreign posts are construed as shipments by the Postal Service, there may be good reason to view such inbound mail as market dominant. The record is not sufficiently developed to enable the Commission to determine what inbound international mail is appropriately classified as ''bulk international'' and, therefore, a competitive product. The parties commenting on the foregoing discussion should thoroughly address the law and facts supporting their position and, in particular, the application of section 407(e) to inbound mail.

Lastly, regarding competitive products, section 3632(b)(3) permits rate (or class) changes not of general applicability for competitive products. In recognition of this, the Commission is initially of the view that negotiated service agreements for mail classified as competitive are within the competitive products category and that each such agreement should be classified as a separate product.

C. General Applicability of Rates and Classes

Section 3632(b) identifies two types of rates or classes—those of general applicability and those not of general applicability. Each is qualified by the phrase ''in the Nation as a whole or in any substantial region of the Nation[.]'' Sections 3632(b)(2) and (b)(3). Section 3632(b)(4) provides that the Commission shall establish by regulation the criteria for determining whether a rate or class is or is not of general applicability in the nation or any substantial part of the nation.

Three parties address the ''general applicability'' of rates or classes largely by reference to their availability. The Postal Service suggests that a rate (or class) is of general applicability if it is ''publicly available throughout the nation[.]'' Postal Service Comments, June 18, 2007, at 19. UPS advocates a generally similar standard, contending that a rate or class is of general applicability ''if it is available to all mailers equally,'' even if not all mailers satisfy the conditions for the rate or class. UPS Comments, June 18, 2007, at 7. At the other end of the spectrum, the parties suggest that rates or classes negotiated between the Postal Service and individual mailers are not of general applicability. *See* Postal Service Comments, June 18, 2007, at 19; UPS Comments, June 18, 2007, at 7; and PSA Comments, June 18, 2007, at 4.

Defining whether a rate or class is ''of general applicability'' by reference to its availability is a reasonable means for establishing the outer bounds of the term. The Commission will adopt that standard. Thus, a rate (or class) of general applicability is one that is available nationwide to all mailers equally, i.e., on the same terms. That some mailers may not be able to qualify for the rate, *e.g.*, for failure to satisfy the preparation requirements, or because it is not available in all geographic areas, does not alter the nature of the rate as one of general applicability.[35]

On the other hand, a contract rate (negotiated service agreement) negotiated between the Postal Service and an individual mailer would not be of general applicability.[36] Between these parameters, however, determining whether a rate or class is or is not of general applicability throughout the nation or in any substantial region of the nation is less exact and, in all likelihood, would turn on the facts. In those situations, availability will continue to serve as a reasonable touchstone for determining the general applicability of the rate or class.

Only the Postal Service addresses the meaning of the term ''substantial region,'' suggesting that it be defined by the size of the population of the relevant region. Postal Service Comments, June 18, 2007, at 19–20. That standard is one of several that might be appropriate.[37] Rather than address the issue in the abstract, the Commission concludes that whether a rate or class is or is not of general applicability in any substantial

[34] The Commission's interpretation of section 407(e) concerns only its role as the arbiter of international mail to be classified as a competitive product. It is not intended to suggest how other federal agencies may apply the customs laws and other laws relating to the importation and exportation of mail.

[35] Express Mail is not available to or from certain difficult-to-access locations. Nonetheless, it is available in the nation as a whole.

[36] A ''negotiated service agreement'' is a contract negotiated between the Postal Service and another entity, most likely the mailer, for service and rates different from those of general applicability.

[37] The Census Bureau, for example, divides the country into four regions, which are further subdivided into divisions. The geographic area of the nine states that comprise the West Region's Mountain Division is more than three times greater than that occupied by the South Region's South Atlantic Division, which is comprised of eight states and the District of Columbia stretching from Delaware to Florida (856.1 thousand square miles versus 266.1 thousand square miles). However, the population in the South Atlantic Division is more than 2.5 times greater than that of the Mountain Division (57.1 million versus 20.8 million based on July 2006 estimates).

region of the country is, at least at the outset, best determined on a case-by-case basis based on the facts presented. Currently, with the possible exception of Alaska bypass, the Postal Service does not provide any non-nationwide service.[38] Among other things, section 3642 concerns the establishment of new products. Thus, to the extent the Postal Service chooses to offer a product on a less-than-nationwide basis, there will be an opportunity to consider the phrase ''substantial region of the nation'' in the context of a specific proposal.

D. Information Supporting Rate and Class Decisions

The Governors' authority to establish rates and classes for competitive products is subject to subchapter II of chapter 36 of title 39 and the regulations promulgated by the Commission under section 3633 to: (a) Prohibit cross-subsidies of competitive products by market dominant products, (b) require each competitive product to cover its attributable costs, and (c) ensure that collectively competitive products cover an appropriate share of the institutional costs of the Postal Service. In Order No. 15, the Commission solicited the parties' views on what information is needed to support changes in rates or classes whether of general applicability or not. PRC Order No. 15, May 17, 2007, at 6–7. In addition, the Commission asked whether the information needed to support a rate decrease differed from that for a rate increase. *Id.* at 6.

The parties offer starkly contrasting views on the information needed to support changes in rates. Advo, PSA, and the Postal Service contend that nothing need be filed with the Commission, other than the notice required under section 3632(b)(3), at the time rate changes are announced.[39] These parties assert that competitive products' compliance with section 3633 should be considered only in the annual compliance review under section 3653. *Id.* UPS, on the other hand, contends that rate changes should be accompanied by the following information: Volumes, revenues, billing determinants, attributable costs, including an explanation of substantial cost changes; prior fiscal year audited data; projected data for the period when the rates are in effect; and unaudited data for the current fiscal year.[40] UPS concludes that pre-implementation review is a prerequisite for determining competitive products' compliance with section 3633. *Id.*

The Postal Service asserts that the ''structure of the statute, including, the nature of the data required to show compliance with 3633, suggests that there is no prior review by the Commission.'' Postal Service Comments, June 18, 2007, at 18. In support, it points to the different notice requirements associated with rate changes of general applicability (**Federal Register** notice no less than 30 days prior to the effective date) and rate changes of less than general applicability (filing with the Commission not less than 15 days prior to the effective date). *Id.* at 18–19. It argues that the former suggests that any substantive review is limited to the annual compliance review, whereas the latter seemingly is intended to protect the confidentiality of customized agreements. *Id.* at 19. This argument is not persuasive.

The statutory provisions governing competitive products, 39 U.S.C. 3631–34, neither explicitly provide for nor prohibit pre-implementation review of rate changes by the Commission. Section 3633 directs the Commission to promulgate regulations to: (a) Prohibit cross-subsidies of competitive products by market dominant products; (b) ensure that each competitive product covers its attributable costs; and (c) that collectively competitive products make an appropriate contribution to the Postal Service's overhead. To fulfill these responsibilities, the Commission cannot turn a blind eye to changes which may not be in compliance with those requirements. The different notice/filing requirements prescribed by section 3632 suggest the need for closer scrutiny of certain types of rate changes.

Section 3632(b)(2) requires that, for rate (or class) changes of general applicability, the Governors publish each rate (or class) decision and the record of the Governors' proceeding in the **Federal Register** at least 30 days before the effective date of any new rates or classes.[41] Rates (or classes) of general applicability are available to all mailers equally, i.e., those satisfying the eligibility standards for the rate (or class). So, for example, Parcel Select rates would be available to all mailers meeting the eligibility requirements for such service. In essence, rates of general applicability are the published (or tariff) rates for the particular service. When a carrier's published rates (those of general applicability) are changed, experience suggests that they are likely to be increased.[42] As a general rule, anytime competitive prices are increased concern over unfair competition is diminished. Likewise, increases in postal rates of general applicability above those found in compliance with section 3633 can, for purposes of these implementing regulations, be deemed to be presumptively reasonable. In that situation, the annual review would appear to be adequate to assure compliance with section 3633. The complaint process would be available as well.

An identical presumption of reasonableness cannot fairly be presumed for rate decreases of general applicability, which, at a minimum, intensify concerns about potentially unfair competition. This is not to suggest any limitation on the Governors' authority to change rates. Unlike its private enterprise counterparts, however, the Postal Service has no residual claimants, i.e., stockholders, to shoulder the consequences of an improvident decision to change rates. The Commission's role is to ensure that rates and classes comply with section 3633. By doing so, the Commission preserves fair competition. The change in circumstances giving rise to the decrease, resulting in a reduction from the pre-existing presumptively lawful rates, justifies the pre-implementation review to ensure continued compliance with section 3633. Thus, the Commission proposes that for decreases in rates of general applicability the Postal Service will be required to demonstrate the change is in compliance with section 3633. See section 3015.3(c) of the proposed regulations. The Commission does not anticipate that the regulations will either unduly burden the Postal Service

[38] Although Express Mail service is not available at every post office, unquestionably the service would be fairly characterized as being of general applicability throughout the nation.

[39] Advo Comments, June 18, 2007, at 10–11; PSA Comments, June 18, 2007, at 4; and Postal Service Comments, June 18, 2007, at 18–19.

[40] UPS Comments, June 18, 2007, at 4–5. In its reply comments, UPS appears to modify its position, indicating, among other things, that it is not suggesting the Postal Service be required to file test year projections and that fiscal year data included in the annual report may be sufficient for rate changes noticed relatively shortly after the filing of the annual report. UPS Reply Comments, July 3, 2007, at 3–4.

[41] Pursuant to the proposed regulations, the Postal Service will also be required to file the notice of all proposed rate (and class) changes of general applicability with the Commission no later than the date such notice is published in the **Federal Register**.

[42] *See, e.g.*, FedEx Corporation's press releases of December 4, 2006, announcing a 4.9 percent increase in certain ''standard list rates;'' and of November 3, 2006, announcing a 3.5 percent increase in the net average shipping rate for FedEx Express, both of which may be accessed at: *http://www.fedex.com/us/about/news/pressreleases/?link=4.*

or delay the effectiveness of changes satisfying the minimal standards of lawfulness.

Section 3632(b)(3) authorizes the Governors to establish rates (or classes) not of general applicability, i.e., to execute negotiated service agreements with mailers providing for rates different from the published rates (of general applicability). Notably, negotiated service agreements are subject to different filing requirements than are rate changes of general applicability. Specifically, each such negotiated service agreement (rate or class decision not of general applicability) and the record of proceedings in connection with such decision must be filed with the Commission not less than 15 days prior to the effective date of any new rate or class. There is good reason for the different filing requirements depending upon the type of rate change involved.[43]

Changes not of general applicability will invariably involve discounts compared to published rates and perhaps involve combinations of services. Thus, such arrangements will inevitably raise concerns about the potential for unfair competition. The Commission would be remiss if it did not review these filings prior to their implementation to ensure compliance with section 3633. The Governors' rate (or class) changes must be in writing and include a statement of explanation and justification. 39 U.S.C. 3632(b)(1). The information to demonstrate compliance with section 3633 will presumably have been reviewed by the Postal Service and be readily available. Thus, the Commission proposes to require the Postal Service to file with all competitive negotiated service agreements, i.e., rate (or class) changes not of general applicability, sufficient cost and revenue information to enable the Commission to assess, as a preliminary screen, whether the agreement satisfies the requirements of section 3633. In particular, the Commission proposes that the Postal Service be required to show that each negotiated service agreement covers its attributable costs and to represent that the agreement is otherwise in compliance with section 3633.

The Commission does not anticipate that this review process will delay the effective date of any negotiated service agreement found to be in compliance with section 3633. Nor will the review process impinge on the Governors' authority to change rates or execute negotiated service agreements. The limited review is intended to provide some assurance that, at least preliminarily, the arrangement is not unlawful. As these arrangements will undoubtedly contain commercially sensitive information, it is understood that the Postal Service may exercise its prerogative to seek appropriate protective conditions.

E. Section 3633 Standards

Section 3633 contains three provisions by which the lawfulness of competitive products' rates are judged. These provisions, prohibiting cross-subsidies, establishing an attributable cost floor, and requiring an appropriate institutional cost contribution, are designed to act in concert to ensure that competitive rates are lawful. Each provision, along with the parties' suggestions for its implementation, is discussed in turn.

1. Prohibition Against Cross-Subsidies

Section 3633(a)(1) prohibits the subsidization of competitive products by market dominant products. In response to Order No. 15, the parties suggest a wide range of standards to be used to test for cross-subsidies.

- OCA suggests that the standard requires competitive products to cover both their attributable costs plus an appropriate share of institutional costs. OCA Comments, June 18, 2007, at 33.
- APWU contends that there is no cross-subsidy if competitive products cover their attributable costs. APWU Comments, June 18, 2007, at 5.
- PSA advocates use of the incremental cost test, whereby ''revenues for each competitive product cover its incremental cost.'' PSA Comments, April 6, 2007, at 5. It suggests that the Commission's attributable costs serve as a proxy for incremental costs. *Id.*[44]
- Advo endorses the incremental cost test applied to competitive products collectively, i.e., revenues from competitive products ''cover their combined incremental costs.'' Advo Comments, June 18, 2007, at 11.[45]
- UPS contends that subsection (a)(1) redefines the term ''subsidy'' to require that competitive products collectively cover their attributable costs, their appropriate share of institutional costs, plus an additional amount representing ''a fair share of the unattributable network costs from which competitive products benefit.'' UPS Comments, June 18, 2007, at 9.[46]
- The Postal Service advocates a standard requiring competitive products' total revenues to be at least equal to the sum of each product's attributable costs ''plus the group-specific costs caused by the competitive products as a group.'' Postal Service Comments, June 18, 2007, at 24.[47]

To test for cross-subsidies, the Commission will initially apply the incremental cost test, a standard that Advo and PSA suggest.[48] Incremental costs are the variable and fixed costs that would be eliminated if a product (or products) was (were) (hypothetically) discontinued.[49] In prior rate cases, the Commission has discussed the issue and adopted a definition offered by Postal Service witness Panzar: ''The revenues collected from any service (or group of services) must be at least as large as the additional (or incremental) cost of adding that service (or group of services) to the enterprise's other offerings.'' PRC Op. R97–1, ¶ 4022, quoting USPS–T–11 at 8. While acknowledging that this is the test it should endeavor to apply (*id.,* ¶ 4026), the Commission's attempts to do so have been thwarted by concerns about the underlying assumptions used, *e.g.*, constant variability and the stability of the operating plan. *See, e.g.*, PRC Op. R2000–1, ¶ 4055 (''the results of the test may still be unreliable where deleting a subclass or combination of subclasses causes a large reduction in an important cost driver.'')

The Commission recognizes that presently it lacks the data that would enable it to employ rigorously the incremental costs to test for cross-subsidies of competitive products. Shortly, the Department of the Treasury will provide its analysis of Postal Service costs, and the Commission will initiate a public proceeding to evaluate

[43] The Postal Service's suggestion that customized agreements are required to be filed with the Commission, as opposed to simply being noticed in the **Federal Register**, to protect the confidentiality of such agreements (Postal Service Comments, June 18, 2007, at 19), is only one aspect of this issue. The Postal Service is aware that certain information should be public. *See* 72 FR 37454 (July 10, 2007), concerning recent revisions to the IMM regarding the notifications of ICMs.

[44] PostCom supports PSA's position. PostCom Reply Comments, July 3, 2007, at 5.

[45] Advo notes the possibility that implementation of section 2011(h) may cause an increase in competitive products' costs, ''resulting in a rate floor that is well in excess of the 'cross subsidy' threshold.'' *Id.*

[46] UPS asserts that the Federal Trade Commission's report, pursuant to section 703(d) of the PAEA, will aid the Commission in determining the ''net economic benefit realized by the Postal Service due to preferential legal treatment[.]'' *Id.*

[47] The Postal Service indicates that an analysis will be required to identify group-specific costs. *Id.* at 21.

[48] PSA's endorsement of the incremental cost test appears to be designed to satisfy both the proscription against cross-subsidies and the requirement that each product cover its attributable costs. *See* PSA Comments, April 6, 2007, at 5.

[49] *See* Docket No. R87–1, USPS–T–3 at 11.

this information.[50] Previously, to test for cross-subsidies the Commission has used each product's attributable cost as a reasonable proxy for the costs associated with that product.[51] Endorsing this standard as an appropriate surrogate, the Commission remarked that ''nonnegative markups are good evidence against the presence of the most elementary cross subsidies.'' PRC Op. R97–1, ¶ 4024.[52]

The Postal Service's suggested test, competitive products' revenues at least equal to the sum of the products' attributable costs plus the products' causally related group-specific costs, appears to be similar to the incremental cost test. To test for cross-subsidies, the incremental cost test should consider all possible combinations of products (services). It is not clear whether this is different from what the inclusion of ''group-specific costs'' contemplates. *See* Postal Service Reply Comments, July 3, 2007, at 40. In any event, the Postal Service does agree that ''analysis will be required'' to quantify the additional, causally related, non-variable group-specific costs. Postal Service Comments, June 18, 2007, at 21.

To test for cross-subsidies, the inclusion of such group-specific costs is appropriate. Thus, until reliable incremental cost data are available, the Commission will continue to use its current cross-subsidy test, supplemented to include causally related, group-specific costs. If and when incremental costs can be accurately determined, the Commission may adjust its existing practice.

UPS asserts that the PAEA redefines cross-subsidy to require that competitive products collectively bear costs in excess of their attributable costs ''and a fair share of the unattributable network costs from which competitive products benefit.'' UPS Comments, June 18, 2007, at 9. The Postal Service, Advo, and PSA take issue with UPS's contention that the PAEA redefines the term ''subsidy.'' [53] The Commission will not adopt UPS's construction. The relevant PAEA provisions, sections 3633(a)(1) and 2011(h)(1)(A)(i)(II), prohibit the cross-subsidy of competitive products by market dominant products. Apart from any consideration of the public policies that might be furthered by the UPS test, an issue not developed on this record,[54] the Commission does not interpret the foregoing provisions as redefining the concept of cross-subsidy.

2. Attributable Cost Floor

Section 3633(a)(2) requires that each competitive product cover its attributable costs, which, in section 3631(b), are defined as ''the direct and indirect postal costs attributable to such product through reliably identified causal relationships.'' This standard codifies the Commission's long-standing method of attribution under the Postal Reorganization Act. *See, e.g.*, PRC Op. R97–1, ¶ 4017 (''The Commission is not prepared to depart from the position that attributable cost means costs which can be said to be reliably caused by a subclass of mail or service.'') [55] For purposes of initially implementing regulations pursuant to section 3633, the Commission intends to employ this long-established attribution method to determine compliance with section 3633(a)(2).

UPS advocates that long-run incremental costs be used as the benchmark for each competitive product's attributable costs. UPS Comments, June 18, 2007, at 12. It views this approach as preferable to the existing method because it includes ''shared fixed costs,'' i.e., fixed costs incurred over the long run by more than one product. *Id.* In reply comments, UPS appears to endorse this standard to test for cross-subsidies as well, at least with respect to calculating group-specific costs. UPS Reply Comments, July 3, 2007, at 5. The Commission does not adopt UPS's suggestion.

Section 3633(a)(2) specifies attributable costs as a term that has an accepted meaning in the context of Postal Service costing. Employing long-run incremental costs as a measure of attributable costs renders all costs variable in theory.[56] Furthermore, although the notion of shared fixed costs may be relevant to the issue of cross-subsidies, as discussed in the previous subsection, UPS has not demonstrated any reasonable nexus between those costs, which by definition are fixed regardless of the number of products, and a product's attributable costs, including those reliably identified based on causal relationships.

In its response to Order No. 15, the Postal Service does not appear to comment specifically on the standard to be used to measure compliance with section 3633(a)(2). Rather, it includes that subsection in its interpretation of what section 3633 requires as a whole, namely, that competitive products' revenues ''be sufficient to cover the sum of attributable costs and group specific costs, plus any mark-up on attributable costs that the Commission determines is 'appropriate.' '' Postal Service Comments, June 18, 2007, at 23. In its reply comments, the Postal Service recognizes that the statutory definition, section 3631(b), codifies the long-standing attribution method. Postal Service Reply Comments, July 3, 2007, at 29. The Postal Service goes on, however, to note its apparent agreement with UPS ''that, for purposes of 3633(a)(2), the cost floor for each competitive product should be the costs the Postal Service would avoid if it did not offer that competitive product.'' *Id.* This statement appears to suggest agreement with UPS's position regarding the use of long-run incremental costs for purposes other than testing for cross-subsidies, although the Postal Service does raise the issue of how one would define the period sufficient to allow the Postal Service to adjust fully to the impact the provision of the service creates. *See id.* at 30. This appears to be an area where future analysis may be warranted.

3. Appropriate Share of Institutional Costs

Section 3633(a)(3) requires that competitive products collectively cover an ''appropriate share'' of the Postal Service's institutional costs. The term ''appropriate share'' is not defined; its meaning is left for the Commission to determine based on consideration of all relevant factors. The parties addressing this issue suggest a variety of

[50] UPS and NAA urge the Commission to commence a separate proceeding to address cost issues. UPS Comments, June 18, 2007, at 15; NAA Comments, June 18, 2007, at 11–12.

[51] PSA suggests this as well. PSA Comments, April 6, 2007, at 5.

[52] APWU does not elaborate on its suggestion there is no cross-subsidy provided that competitive products cover their attributable costs. APWU Comments, June 18, 2007, at 5–6. Without more, however, that standard appears merely to restate subsection (a)(2)'s requirement of an attributable cost floor. OCA's suggested test, on the other hand, does take into account non-negative markups, but also includes ''an appropriate share of institutional costs[.]'' OCA Comments, June 18, 2007, at 33. The test for cross-subsidies is independent from the issue of what the appropriate share should be for competitive products as a whole. Revenues in excess of incremental costs (or attributable costs in the interim) demonstrate no cross-subsidy exists, but are not necessarily an indication that the contribution to institutional costs (the share) is appropriate.

[53] Postal Service Reply Comments, July 3, 2007, at 24–27; Advo Reply Comments, July 3, 2007, at 5–7; and PSA Reply Comments, July 3, 2007, at 3–5.

[54] *See* Advo Reply Comments, July 3, 2007, at 7.

[55] Elaborating on the point, the Commission noted that in addition to specific fixed costs it also found other nonvariable costs to be attributable, *e.g.*, the fixed portion of special delivery messengers. *Id.* at ¶ 4016. *See also* PSA Comments, April 6, 2007, at 9.

[56] *See* Postal Service Reply Comments, July 3, 2007, at 29–30, remarking on the period deemed sufficient to allow the Postal Service to adjust fully to the impact the provision of the product creates.

approaches, the most concrete of which is that the Commission begin with the markups from Docket No. R2006–1.[57] Several parties urge that the contribution be set at a low level, arguing, among other things, that it represents a floor not a ceiling, that the Postal Service has incentive to exceed that floor, and that if set too high the Postal Service will be unable to compete and, as a result, contribution will be lost to the detriment of market dominant mailers.[58] One party contends that contributions from market dominant and competitive products must be compared, suggesting various ways in which this might be accomplished, *e.g.*, on a per-piece (unit contribution) or percentage (markup) basis.[59] The Postal Service advocates that the contribution be set at a relatively low level,[60] suggesting that it be ''calculated as a mark-up on the sum of the competitive products' attributable cost.'' *Id.* at 23. UPS agrees with this method of calculating the contribution. UPS Reply Comments, July 3, 2007, at 6.

The Commission considered various options, including all of those suggested in the comments, in evaluating how best to quantify, at least initially, appropriate share. Among the options considered and rejected were: Equal unit contribution, equal percentage markup, markup of competitive products' attributable costs, and percentage of revenues. None of these was deemed preferable to the alternative of basing competitive products' contribution on a percentage of total institutional costs. To be sure, the various other methods could all be expressed mathematically in terms of percentage of total institutional costs, but each implies a pricing technique, *e.g.*, a particular coverage level, absent from simply basing appropriate share on a percentage of total institutional costs. The latter better reflects the section 3633(a)(3) directive and is more easily understood than the various alternatives. Moreover, this approach is a fitting starting point, recognizing that by year's end the Department of the Treasury will submit recommendations to the Commission relating to treatment of Postal Service costs. Interested persons will have an opportunity to comment on those recommendations. *See* section 2011(h)(2)(A).

In attempting to quantify appropriate share, the Commission begins its analysis with the competitive products' contribution resulting from rates recommended in Docket No. R2006–1. Based on the recommended rates, the Commission estimates that in TY 2008 competitive products will contribute approximately $2.4 billion to the Postal Service's institutional costs.[61] Expressed as a percentage, this figure represents approximately 6.9 percent of the total contribution to institutional costs.

For purposes of implementing these regulations initially, the Commission is persuaded that the competitive products' contribution should be modified from Docket No. R2006–1 levels. The Commission proposes to set the initial contribution at 5.5 percent of the Postal Service's institutional costs. Illustratively, based on Docket No. R2006–1 TY 2008 figures, this percentage yields a contribution of approximately $1.9 billion.

Several factors influence the Commission's proposal to establish an appropriate share below the contribution level derived from rates recommended in Docket No. R2006–1. The PAEA so thoroughly overhauls the ratemaking process that the Commission would be remiss if it failed to consider the differences in the rate setting process. Under the pre-PAEA Postal Reorganization Act (PRA), postal rates were constrained by a break-even requirement and systemwide pricing scheme under which institutional costs were assigned based on non-cost factors.[62] Given these constraints, pricing was a ''zero-sum game,'' i.e., an increase (or decrease) in the assignment to one subclass (or service) must be offset by a decrease (or increase) to one or more other subclasses (or services).

In lieu of that system, the PAEA bifurcates Postal Service products into market dominant and competitive categories with a principal objective being to reduce costs and increase efficiency. Under the PAEA, the Postal Service has an incentive to reduce both attributable and institutional costs due to limitations on market dominant rates and because it is authorized to retain earnings.

Under the PRA, the assignment of institutional costs was designed to ensure that each subclass or type of mail made a reasonable contribution to the Postal Service's overhead, yielding rates that were fair and equitable and subsidy-free. The PAEA addresses the issues of rate levels and subsidies differently. Market dominant rates are limited by a price cap, not by policy considerations. Thus, market dominant mailers are insulated from the consequences of any failure by the Postal Service to compete successfully. Rates for competitive products are subject to market conditions and, by statute, must satisfy criteria which preclude the possibility of subsidization by market dominant products.

The ''appropriate share'' required by the PAEA is not synonymous with ''reasonably assignable'' required by PRA section 3622(b)(3). No longer are rates for competitive products predicated on explicit consideration of specific non-cost factors. Moreover, the resulting rate levels represent significantly different things. Under the PRA, rate levels equate with maximum rates for the subclass or type of mail, as rates are not designed to generate a surplus. In contrast, under the PAEA, the concept of rate levels for competitive products largely disappears, with the Postal Service given the flexibility to price competitive products however it wishes, provided its rates satisfy the statutory standards of lawfulness. Appropriate share is a floor for all competitive products, but the hope (and expectation) is that competitive products will generate contributions in excess of the floor. Thus, it is unlike reasonably assignable in two other respects: it applies to competitive products collectively, not to subclasses or services individually; and it represents a minimum (not maximum) contribution level, serving as a threshold for compliance with section 3633(a)(3). Because it may retain earnings, the Postal Service has incentives to exceed this threshold, including reducing rate pressure on market dominant rates, continuation of

[57] *See* OCA Comments, June 18, 2007, at 34–35; PSA Comments, April 6, 2007, at 11–13; Pitney Bowes Comments, April, 6, 2007, at 38: and UPS Reply Comments, July 3, 2007, at 6. Initially, UPS suggested that the contribution from competitive products should be maximized. UPS Comments, April 6, 2007, at 5–7.

[58] Advo Reply Comments, May 7, 2007, at 15–19; MOAA Comments, June 18, 2007, at 2; and APMU Comments, April 6, 2007, at 3–5.

[59] Valpak Comments, June 18, 2007, at 13–14. Valpak states that such comparisons ''would enable the Commission to ensure that competitive products are not subsidizing market-dominant products[.]'' *Id.* at 14.

[60] Postal Service Comments, June 18, 2007, at 24–26.

[61] Necessarily, the results are estimated since data are not reported for bulk parcel post and bulk international mail separately from their single-piece counterparts. For purposes of this exercise, bulk parcel post consists of Parcel Select, Parcel Return Service, and Parcel Post eligible for a BMC, OBMC, or barcode discount. The foregoing estimate includes a TY 2008 contribution for bulk international mail of approximately $176 million (out of $376 million), calculated using the average percentage contribution for competitive international mail in FY 2005 and FY 2006 as a proxy.

[62] Among the non-cost factors the Commission used to assign institutional costs are: Value of service, impact on mailers and competitors, availability of alternatives, and simplicity of rate structure. See 39 U.S.C. 3622(b) (2002). For purposes of this discussion, reference to the PRA is shorthand for the Act prior to its amendment by the PAEA.

universal service, and the possibility of bonuses.

Section 3633 requires that each competitive product cover its attributable costs and prohibits competitive products from being subsidized by market dominant products. Thus, they must be self-sustaining since any shortfall cannot be recovered by increasing market dominant rates.

In attempting to quantify an appropriate contribution, the Commission is mindful of the risks of setting it too high, particularly at the outset of the new system of regulation. The market is competitive; the Postal Service's market share is relatively small; and the Postal Service needs some flexibility to compete. On the other hand, the Commission has an obligation to preserve competition by not establishing a markup so low as to give the Postal Service an artificial competitive advantage. The task, as Advo noted, ''calls for a delicate balance.'' Advo Reply Comments, May 7, 2007, at 16.

The Commission's proposal to set the minimum contribution level at 5.5 percent of total institutional costs is influenced by historic results. A review of the Cost and Revenue Analysis (CRA) for domestic and international postal operations supports a best estimate of competitive products' contribution to institutional costs at 5.4 percent in FY 2005 and 5.7 percent in FY 2006. These figures were developed based on the reported FY 2005 and FY 2006 data for Priority Mail, Express Mail, and international mail.[63] The CRA reports Parcel Post data in the aggregate. Thus, to develop an estimate for bulk Parcel Post, consisting of Parcel Select, Parcel Return Service, and Parcel Post mail eligible for a BMC, OBMC, or barcode discount, the Commission calculated an estimated bulk parcel post unit contribution for FY 2005 based on actual FY 2005 data. Comparable data are not available for FY 2006. Thus, the estimated FY 2006 bulk parcel post contribution is based on the same proportional relationship between bulk parcel post and parcel post as a whole used for FY 2005.[64] Setting the initial competitive products' contribution at historic levels is a reasonable means to quantify appropriate share, particularly at the outset of the new form of competitive rate regulation. Since it is no longer subject to the pricing constraints of the PRA, the Postal Service should perform at least as well as it has historically.

This order represents the initial effort to implement the competitive products' regulations. The Commission emphasizes that its initial quantification of appropriate share is not written in stone. The statute specifically authorizes the Commission to revise this share as needed and, in any event, requires that the regulations be reviewed every five years to determine whether they be retained, modified, or eliminated. The Commission anticipates that that need may arise for any number of reasons, *e.g.*, additions or deletions to the competitive product lists and market conditions.[65]

4. Application of the term ''product''

The PAEA defines the term ''product'' to mean ''a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.'' 39 U.S.C. 102(6). The parties offer widely differing suggestions as to how this definition should be applied. The Postal Service recognizes that the term could be interpreted to mean individual rate categories are products. Postal Service Supplemental Comments, June 19, 2007, at 6. It dismisses that construction, however, contending that product should be ''interpreted at a high level of aggregation'' and proposing that it be interpreted ''as generally equivalent to the current 'subclasses' under the PRA.'' *Id.* Several parties echo the Postal Service's view that product should be equated with subclass.[66] OCA, on the other hand, takes the position that, for competitive products, the term ''product'' be interpreted ''at the rate-cell level.'' OCA Comments, April 6, 2007, at 36. NAA asserts that product is not synonymous with subclass or rate category, but instead should be construed ''more consistent with everyday understandings[.]'' [67] Other parties assert that various specific arrangements, *e.g.*, special classifications, customized agreements, and negotiated service agreements, either are or are not products.[68]

Suggestions that the term ''product'' be applied in a blanket fashion are neither practical nor justified. Instead, as discussed below, a more nuanced approach, based on balancing the objectives of the PAEA and practical considerations, is required.

Plainly, product cannot reasonably be read as equivalent to subclass since product is defined as having either ''a distinct cost *or* market characteristic'' [69] whereas, under the Commission's long-established practice, subclass requires both cost and demand differences. The Commission has clearly expressed the relevant standard: ''To identify groupings of mail, which should be accorded subclass rather than rate category treatment, the Commission traditionally has sought to identify differences in both cost and market, or demand.'' [70]

The PAEA overhauls postal ratemaking, bifurcating the mailstream into market dominant and competitive mail categories, and prescribing different rate setting mechanisms for each. Market dominant rates are subject to an annual price cap. Section 3622(d)(1)(A). This foremost ratemaking requirement is, by statute, applicable to classes of mail as defined in the DMCS in effect on the date of enactment of the PAEA. Section 3622(d)(2)(A). In

[63] The figures for international mail were developed based on the contribution associated with that mail included within the competitive category in this order. The international CRA for FY2006 does not separately identify data for Global Bulk Economy (GBE) mail. However, since GBE had no reported volume in FY 2005, its contribution in FY 2006, if any, would likely have no measurable affect on the total international mail contribution.

[64] The contribution from bulk parcel post is, in any event, relatively minor. For the convenience of the parties, workpapers showing the development of these estimates will be made available on the Commission's Web site (*http://www.prc.gov*) in Docket No. RM2007–1. The Commission is providing this level of detail so that parties have an opportunity to review the underlying data and, if appropriate, suggest revisions which may more accurately portray historic results.

[65] Pursuant to section 2011(h)(1)(A)(ii), the Secretary of the Treasury will recommend substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income. Those recommendations are due on or before December 19, 2007. Interested persons will have an opportunity to comment on those recommendations. For purposes of this order, it is sufficient to note that the assumed Federal income tax on competitive products income is an issue that may affect future efforts to develop an appropriate share.

[66] *See, e.g.*, PSA Comments, June 18, 2007, at 11; MOAA Reply Comments, July 3, 2007, at 4; Advo Reply Comments, July 3, 2007, at 12; and Pitney Bowes Comments, June 18, 2007, at 11.

[67] NAA Comments, June 18, 2007, at 14. NAA observes, correctly, that product is defined in a manner that ''resembles the Commission's traditional test for a rate category.'' *Id.* at 14–15.

[68] *See, e.g.*, NPPC Comments, June 18, 2007, at 10 (negotiated service agreements are products); PostCom Reply Comments, July 3, 2007, at 7–8 (each market dominant negotiated service agreement should be viewed as a distinct product); GCA Comments, June 18, 2007, at 9–10 (special classifications and class not of general applicability containing one service would be a product, but a negotiated service agreement may or may not be); and NAA Comments, June 18, 2007, at 16 (status of negotiated service agreements should be decided on a case-by-case basis). *See also* UPS Comments, June 18, 2007, at 19 (rates for a given type of mail may vary only if there is ''a distinct and significant cost or market characteristic for [that] type of mail * * *'').

[69] 39 U.S.C. 102(6) (emphasis added).

[70] *See* PRC Op. MC95–1, ¶ 3022 (emphasis added); *see also id.* ¶ 3023 (''The Commission has consistently expected proponents of separate subclass treatment to show differences in both costs and demand.'').

contrast, competitive rates are not tied to a cap; instead, they cannot be set below certain cost thresholds, including, among other things, the requirement that each competitive product covers its attributable costs. Section 3633(a)(2). When drafting the PAEA, Congress was well aware of the Commission's long-established definitions, as it showed when defining ''costs attributable'' in section 3631(b). It can be assumed to have intentionally chosen the term ''product'' in preference to ''subclass,'' a term that is not defined by the PAEA and, under the new rate setting procedures, is largely an irrelevant artifact.

Nor is the Commission persuaded by the Postal Service's attempts to buttress its suggestion that product be defined as a subclass by reference to other provisions of the PAEA. For example, it compares section 3622(c)(2) with former section 3622(b)(3) and notes that attribution ''is expressly linked 'to each competitive product.' '' Postal Service Supplemental Comments, June 19, 2007, at 7. Based on this, it concludes ''there is nothing to suggest that attribution be done differently under the PAEA than it was done under the PRA: at the subclass level.'' *Id.* The focus on attribution does not support the Postal Service's argument. The PAEA reaffirms the Commission's attribution method and specifically applies it to each competitive product, which is given a different meaning than subclass. Moreover, concerning market dominant products, the price cap regulation supersedes attribution.[71] As discussed below, the rejection of the contention that product should, in all instances, be equated with subclass does not foreclose a finding that a specific subclass is a product.

OCA's proposal is the polar opposite of the Postal Service's. Instead of ''a high level of aggregation,'' [72] OCA would apply the term ''product'' at the most disaggregated level. Specifically, OCA proposes that, for competitive products, product be applied at the rate cell level, a result it contends is suggested by the phrase '' 'distinct cost * * * characteristic.' '' OCA Comments, April 6, 2007, at 36. Thus, under its reading, every competitive rate cell must cover its attributable costs. The Commission does not construe section 102(6) so narrowly.

Rate cells generally reflect cost differences, but that is not the same as having separate distinct cost characteristics. There are myriad cost driving factors, *e.g.*, degree of preparation, density, weight, shape, distance, and type of delivery, that may be characterized as cost characteristics. Rate cells identify variations within characteristics such as zoned rates, or levels of presortation. OCA's system would be impractical to implement and impossible to administer. Aside from these practical difficulties, OCA's proposal is flawed in another respect. It contends that rate cell satisfies the requirement that ''a rate or rates'' be applied because a rate cell may have more than one rate, *e.g.*, the same weight/zone Express Mail Post Office-to-Post Office has different rates than Post Office-to-Addressee. This hardly proves that a rate cell may have more than one rate; rather, the example involves separate rate categories with separate rate cells.

To qualify as a product, a postal service must exhibit either a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied. But the existence of a separate rate, implying a cost difference, does not require that the particular postal service, *e.g.*, rate cell, be deemed a product. A rule of reason must be applied.

The revamped ratemaking under the PAEA is designed to achieve various goals, principal among them are to afford the Postal Service enhanced pricing flexibility, while at the same time providing accountability through greater transparency. These joint goals will best be achieved if they are balanced with one another. Transparency cannot be achieved if the term ''product'' is applied too broadly, *e.g.*, solely at the subclass level. Aggregating postal services into only a few products, a result urged by several parties, forfeits transparency and serves no legitimate business or regulatory need. Stated differently, it will not provide for accountability, a bedrock principle underlying the PAEA. By the same token, pricing flexibility is illusory if the term ''product'' is applied too narrowly, *e.g.*, at the rate cell level. Disaggregating postal services into too many products would impose unwarranted administrative burdens on the Postal Service, thwart pricing flexibility, and serve no legitimate business or regulatory need. It would not, in short, lead to any enhancement in postal service, which, too, is a central principle underlying the PAEA.

In applying the term ''product'' to the competitive and market dominant categories of mail, the Commission has been guided by these principles and has tried to strike an appropriate balance between these competing goals. In doing so, the Commission has also considered other factors, including the type of mail involved, the pre-existing classifications, and the potential for other reasonable groupings of postal services.

The term ''product'' has greater significance for competitive products than for market dominant products. Section 3633(a)(2) requires each competitive product to cover its attributable costs. Each competitive product is identified following the process outlined in section 3631, which first, in section 3631(a), lists four types of mail (''priority mail, expedited mail, bulk parcel post, and bulk international mail'') as being within the competitive category of mail;[73] and second, in section 3631(c), instructs that the ''mail matter'' comprising each of these types of mail has ''the meaning given to such mail matter under the mail classification schedule.'' The Commission is charged with the responsibility of determining what mail matter comprises each of these types of mail, and that mail matter is what initially becomes the competitive products.[74]

In the discussion above, the Commission identified 11 products that initially comprise the competitive products' category. These are as follows:

- Priority mail, consisting of Domestic Priority Mail and International Priority Mail;
- Expedited mail, consisting of Domestic Express Mail and International
- Express Mail;

[71] The Postal Service also contends that language in section 3652(b), which concerns annual reports to the Commission, supports its interpretation of product as being equivalent to subclass. Specifically, it contends that the phrase ''with respect to each market-dominant product for which a workshare discount was in effect'' suggests that a market dominant product is not equivalent to workshare discount, ''such that an individual workshare discount (which is a rate category) is not itself an individual 'product.' '' *Id.* at 8. This supposition is not persuasive. First, as the Postal Service concedes, the term ''product'' could be interpreted as a rate category; thus a workshare discount could be a product. Second, the Commission reads the phrase ''each market-dominant product for which a workshare discount was in effect'' as reflecting the possibility that mail matter for which a workshare discount is in effect, *e.g.*, First-Class automation letters, could be found to be a separate product.

[72] *Id.* at 6.

[73] Mailgrams have been discontinued and, thus, are not discussed.

[74] A few parties suggest that competitive products are defined as the types of mail listed in section 3631(a). *See, e.g.*, NAA Comments, June 18, 2007, at 14–15; PSA Reply Comments, May 8, 2007, at 6; *see also* Postal Service Supplemental Comments, June 19, 2007, at 8–9. These contentions lack merit. Competitive products are not ''define[d]'' in section 3631(a). PSA Comments, May 8, 2007, at 6. That section merely lists the types of mail designated as competitive. It does not define, i.e., identify, what each competitive product is. That process requires the Commission to identify the mail matter that comprises each type of mail listed in section 3631(a) and, as appropriate, to identify the product (or products) within each.

• Bulk parcel post, consisting of Parcel Select, Parcel Return Service, and parcel post qualifying for BMC, OBMC, and barcode discounts;
• Bulk international mail, consisting of IPA, ISAL, and M-bags; and
• Negotiated service agreements, which includes ICMs.[75]

These products not only form the basis for the mail classification schedule, but also comprise the initial competitive product list required by section 3642.

In developing the initial list of competitive products, the Commission balanced the Postal Service's business needs for pricing flexibility with the public's need for accountability. The results demonstrate that the term ''product'' can be applied in a judicious manner, based on a consideration of the law and facts. This process results in products based on classes of mail (Express Mail), subclasses of mail (Priority), rate categories (Parcel Select), and negotiated service agreements. While these products could, in theory, be further disaggregated or, in the case of negotiated service agreements, further aggregated, the Commission concludes that doing so at this time is unwarranted. This effort represents the initial listing of competitive products. In fashioning this list, the Commission has endeavored to balance goals of the PAEA, while also taking into account the parties' competing concerns. The PAEA contemplates that the implementing regulations and the product lists may be changed. See sections 3622(a), 3633(a), and 3642(a). Once experience is gained, the list of products may be changed as warranted.

The application of the term ''product'' to the types of mail listed in section 3621(a) is of lesser significance because, as noted above, the price cap is applied at the class level, not at a product (or any other) level. Nonetheless, the same rule of construction applies. Compare sections 3621(b) and 3631(c). The process begins with section 3621(a) which lists the following 10 types of mail as being within the market dominant category of mail:

1. First-Class Mail letters and sealed parcels;
2. First-Class Mail cards;
3. Periodicals;
4. Standard Mail;
5. Single-piece parcel post;
6. Media Mail;
7. Bound Printed Matter;
8. Library Mail;
9. Special services; and
10. Single-piece international mail.

[75] Each negotiated service agreement is a separate product.

As with competitive products, section 3621(b) instructs that the ''mail matter'' comprising each of the foregoing types of mail ''have the meaning given to such mail matter under the mail classification schedule.'' Moreover, the foregoing list (and thus the mail matter represented therein) are ''subject to any changes the Postal Regulatory Commission may make under section 3642.'' Section 3621(a). The Commission is charged with the responsibility of determining what mail matter comprises each type of mail, and that mail matter is what initially becomes the market dominant products. These products, in turn, form the basis for the mail classification schedule and also serve as the source of the market dominant product list required by section 3642.

The types of market dominant mail listed in section 3621(a) represent a medley of current postal services. Five are classes of mail, *i.e.,* Periodicals; Standard Mail; Bound Printed Matter; and Media and Library Mail; two are subclasses, *i.e.,* First-Class letters and sealed parcels, and First-Class cards; and one, single-piece parcel post, is a rate category. The remaining two include special services, *i.e.,* ancillary services, and single-piece international mail. An additional consideration is that three of these types of mail, First-Class letters and sealed parcels, First-Class cards, and Standard Mail, are covered by the postal monopoly.[76]

In considering how best to identify the mail matter comprising each type of mail, the Commission turns initially to the existing reference materials, an approach suggested by numerous parties. With respect to domestic mail, identifying the relevant mail matter may be accomplished by reference to the DMCS, a relatively straightforward proposition, except for single-piece parcel post. However, since the Commission has identified the competitive products associated with bulk parcel post, the latter simply represents the remaining parcel post mail matter. With respect to single-piece international mail, the relevant mail matter may be gleaned from the IMM. In an earlier filing, the Postal Service suggested specific types of mail matter that might be considered single-piece international mail. Postal Service Reply Comments, May 7, 2007, at 33. Since the Commission has identified the competitive products associated with bulk international mail, the single-piece counterpart would logically consist of the remaining international mail matter.

In addition to the foregoing, the Commission proposes to add negotiated service agreements, *i.e.,* special classifications pursuant to section 3622(c)(10), as separate market dominant product. Initially, each agreement (special classification) will be treated as a separate product.[77] This treatment affords the Postal Service flexibility to enter into any special classification it wishes, but provides the necessary transparency to satisfy relevant business and regulatory needs. Absent the discipline that such accountability imposes, both the Postal Service and the Commission roles under the PAEA may be compromised. For example, the Postal Service may lack agreement-specific details on profitability of the agreement, while the Commission would be unable to assess whether the agreement complied with the statute.

In lieu of identifying at this time the market dominant products associated with the foregoing mail, the Commission concludes, for reasons of accuracy and expedition, that a preferable alternative exists. In commenting on the mail classification process, the Postal Service volunteered to compile a mail classification schedule. Postal Service Supplemental Comments, June 19, 2007, at 11, n.34. The Commission appreciates that offer. Doing so will be a useful exercise as it will enable the Postal Service to draft a mail classification schedule, consistent with this order, that best suits its needs. Previously, the Postal Service indicated the mail classification schedule would contain a level of detail similar to the DMCS. *Id.* at 10–11. The Commission finds that prospect acceptable.

In its submission, the Postal Service should identify the market dominant products it believes should be in the mail classification schedule. This will enable the Postal Service to categorize its services into products so that it can make appropriate business decisions. The draft mail classification schedule should incorporate the competitive products discussed above.

The draft mail classification schedule is due September 14, 2007. Responses to this schedule may be filed by no later than September 28, 2007. Lastly, section 3642 provides the Commission with authority to add or remove products

[76] As a result, these types of mail are distinguishable from other market dominant products. *See* section 3642(b)(2). At first blush, this distinction may suggest a lesser need to disaggregate these types of mail matter into more than one product. Other considerations, *e.g.,* transparency and the business and/or regulatory needs, may outweigh that initial inclination.

[77] In some instances, it may be appropriate to group as a single product negotiated service agreements that are functionally equivalent and thus take on the characteristics of a niche classification.

from the market dominant and competitive product lists, and to transfer products between the lists. This proceeding represents the initial attempt to establish these lists. The Commission anticipates that changes to these lists will be necessary. Once the initial lists are established, the Postal Service may wish to modify them to better serve its and its customers' needs.

IV. Part 3020—Product Lists

Rule 3020.1 explains the purpose of all rules that follow in part 3020. The rules establish a Mail Classification Schedule, which categorizes products as either market dominant or competitive. The categorizations must initially be consistent with the types of mail specified by 39 U.S.C. 3621(a) and 39 U.S.C. 3631(a). Once the Mail Classification Schedule is established, the rules specify the procedures to modify the market dominant and competitive product lists and to update the explanatory information contained therein. Authority for this rule flows directly from the general requirements specified in 39 U.S.C. 3642, which allows the Commission to consider modifications to the market dominant and competitive product lists.

Experimental products offered as market tests are specifically excluded from the requirements of part 3020 by 39 U.S.C. 3641(a)(2). The Commission intends to develop separate rules allowing recognition of experimental products in the Mail Classification Schedule during the market tests to facilitate transparency.

A. Subpart A—Mail Classification Schedule

The Commission is charged with maintaining accurate product lists. 39 U.S.C. 3642. The Commission views the Mail Classification Schedule as the vehicle for presenting the product lists with necessary descriptive content. The explanatory information included with the product lists will inform participants in Commission proceedings of the nature and scope of Postal Service products and must be sufficiently detailed to allow the Commission to verify that the rates and categorization of products are in compliance with the PAEA. Thus, the Mail Classification Schedule is important in that it will provide for the transparent and accurate maintenance of the product lists.

The Postal Service suggests two mail classification schedules: one for market dominant products and one for competitive products. Postal Service Supplemental Comments, June 19, 2007, at 11. The Postal Service believes this is appropriate because different regulatory regimes apply to each side of the business. Postal Service Comments, June 18, 2007, at 16. Additionally, the Postal Service views the product lists as an entity separate from the mail classification schedules.

The Commission, as a matter of preference and administrative ease, proposes a single Mail Classification Schedule subdivided into two parts. A single schedule will be less likely to cause confusion, simpler to administer when modifying product lists, and will facilitate the process of providing adequate public notice when modifications to the product lists occur.

Rule 3020.10 describes the Mail Classification Schedule as a single document containing two parts. The first part contains the list of market dominant products with related explanatory information, and the second part contains the list of competitive products with related explanatory information.

The Postal Service has expressed the view that it should maintain the physical Mail Classification Schedule. Postal Service Supplemental Comments, June 19, 2007, at 14. The Commission finds the Mail Classification Schedule to be the appropriate vehicle for maintaining the market dominant and competitive product lists that the Commission is charged with overseeing. This does not impose constraints on the Postal Service's flexibility to develop new products or modify products consistent with the policies of title 39. The Commission's primary role under 39 U.S.C. 3642, as evident from the proposed rules, is the proper categorization of Postal Service products. The rules proposed for updating product descriptions and features in the Mail Classification Schedule will not inhibit Postal Service flexibility.

The Postal Service has indicated that it may be appropriate for the Mail Classification Schedule to be at a similar level of detail as the previous Domestic Mail Classification Schedule (DMCS). Postal Service Comments, June 18, 2007, at 16. Elements of the International Mail Manual (IMM) also will have to be incorporated into the Mail Classification Schedule. *Id.* The Commission concludes that the Postal Service is in the best position to describe its own products and propose descriptive language to be included in the Mail Classification Schedule. Whether the type of mail is categorized as market dominant or competitive is already determined by statute as specified in 39 U.S.C. 3621(a) and 39 U.S.C. 3631(a). The portion of this notice of proposed rulemaking describing the regulation of competitive products clarifies the proper categorization where potential questions of interpretation might arise. Rule 3020.11 directs the Postal Service to initially propose the contents of a Mail Classification Schedule consistent with the categorization specified by statute.

A short 30-day period from the enactment of this rule is provided for the Postal Service to formulate its Mail Classification Schedule proposal. This should provide sufficient time because it is expected that the Postal Service will draw heavily from existing material provided in the DMCS and the IMM. The Postal Service also has considerable time to plan and undertake preliminary preparation for this activity prior to this rule becoming final.

Several comments suggest that the product categorizations specified in the statute did not fully reflect the distinctions between market dominant and competitive products. Some time after the initial rounds of rulemakings are complete, the Commission expects the Postal Service to propose comprehensive modifications to the product lists to more accurately reflect market dominant and competitive products.[78]

The Commission will file notice of the Postal Service's Mail Classification Schedule proposal in the **Federal Register**, with initial commentary by the Commission, and solicit public comment. This process will allow the Commission to develop a Mail Classification Schedule that can become part of the Commission's rules.

The Commission currently publishes the Domestic Mail Classification Schedule in the Code of Federal Regulations. However, extensive portions of this document are abridged to facilitate the Office of the Federal Register's publication requirements. Redacting portions of this document is labor intensive, and the portions of the document eventually published do not provide a complete description of Postal Service products to interested parties. The Postal Service incorporates by reference the Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) and the IMM into its rules, which avoids many of the publication problems now experienced by the Commission. Incorporating a document by reference into the Code of Federal Regulations requires permission from the Office of the Federal Register. The Commission has initiated discussions with the Office of the

[78] This may include incorporating some ancillary services, which currently are considered special services, into host products.

Federal Register to obtain the permission necessary to incorporate by reference the Mail Classification Schedule. Thus, rule 3020.12 adopts the Postal Service's approach and pending Office of the Federal Register approval incorporates the Mail Classification Schedule by reference into the Commission's rules of practice.

Rule 3020.13 specifies the content of the Mail Classification Schedule. Unlike the current DMCS which is organized by classes and subclasses, the Mail Classification Schedule will be organized by Postal Service products with market dominant and competitive products each appearing in separate sections of the document. This is intended to satisfy the requirement to maintain separate market dominant and competitive product lists.

Unique to the market dominant section of the Mail Classification Schedule is the requirement to specify the class of each product. *See* rule 3020.13(a)(1). A single product might be a class in and of itself, or a group of products such as single-piece Parcel Post, Media Mail, Bound Printed Matter, and Library Mail might make up a class. Identification of class is necessary to implement the system of regulating rates and classes required under 39 U.S.C. 3622(d)(2)(A).

Rules 3020.13(a)(2) and (b)(1) require presentation of product descriptions, and rules 3020.13(a)(3) and (b)(2) require presentation of the current rates and fees. The Commission invites comment on whether the rate and fee schedules should be integrated with each product description, or whether rate and fee schedules should be collected and appear at the end of the market dominant section or the competitive section as applicable, similar to how they now appear in the DMCS.

For competitive products, the rules only require disclosure of rates and fees for products of general applicability. For products not of general applicability, the rates and fees of negotiated agreements still may be disclosed, but disclosure is not required because of the probability that these rates and fees may be subject to confidentiality requirements.

Several products may be subject to unique regulatory treatment under the PAEA, such as products of special classification, products not of general applicability, experimental products undergoing market tests, and non-postal products. Rules 3020.13(a)(4)–(6) and (b)(3)–(5) simply require that these products be identified as such.

The Commission is required to provide notice in the **Federal Register** whenever modifications are approved for the market dominant and competitive product lists. Rule 3020.14(e) implements these notice requirements specified by 39 U.S.C. 3642(d)(2).

B. Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists Described Within the Mail Classification Schedule

Rule 3020.30 provides the procedure for the Postal Service to propose modifications to the market dominant and competitive product lists as specified by 39 U.S.C. 3642(a). Proposals to modify the lists shall be initiated by filing a request with the Commission. The modifications that may be proposed are to add a product to a list, remove a product from a list, or to transfer a product between lists. Multiple modifications may be included in one request.

The Commission requires specific information to properly determine the correct categorization of a product as either market dominant or competitive. It also needs information to assure the accuracy of the product lists in the Mail Classification Schedule. The Postal Service is to provide this information in its request.

Rule 3020.31 specifies the content of the Postal Service's request. It requires the Postal Service to identify the product and class of the product, if applicable, (rule 3020.31(a)), and any special characteristics of the product such as: whether it is a special classification, whether it is a product not of general applicability, or whether it is a non-postal product (rule 3020.31(d)). Rule 3020.31(c) requires the Postal Service to indicate the nature of the request, i.e., whether it is a request to add, remove or transfer a product. Rule 3020.31(f) requires the Postal Service to propose modifications to the Mail Classification Schedule necessary to implement its request. Finally, rules 3020.31(b) and (e) require the Postal Service to provide supporting justification for its request. The supporting justification includes a copy of the Governors' decision supporting the request if one has been issued, and the material specified in rule 3020.32 described below.

Rule 3020.32 directs the Postal Service to provide supporting justification to demonstrate that the modification it requests is in accordance with the policies and applicable criteria of title 39. The supporting justification shall be in the form of a statement from a sponsor(s) of the request who attests to the accuracy of the information provided. Given a presumption that a hearing on the record will not be provided unless a need is demonstrated, the statement need not be in the form of testimony.

Paragraphs (b) through (h) of rule 3020.32 focus attention on specific provisions of title 39. For market dominant products, paragraph (b) requires the Postal Service to demonstrate that its proposal is not inconsistent with the objectives, factors, and requirements of modern rate regulation for market dominant products specified in 39 U.S.C. 3622. For competitive products, paragraph (c) requires the Postal Service to demonstrate that its proposal is not inconsistent with the requirements for rates of competitive products specified in 39 U.S.C. 3633.

The primary criteria upon which the Commission is to review the Postal Service's request are provided in 39 U.S.C. 3642(b). These criteria require consideration of the product's market power, monopoly status, private sector provision of similar products, the opinions of users of the product, and the impact on small business concerns. Paragraphs (d) through (h) of the proposed rule require the Postal Service to provide specific information necessary for the Commission to analyze the request in light of these criteria. Finally, paragraph (i) requires the Postal Service to provide other information as is necessary to fully inform the Commission of its proposal.

Rule 3020.33 institutes a docket for each Postal Service request. Assigning a docket allows the Commission to organize and track all material related to a request within its docketing, i.e., filing online, system. Notice of each docket shall be published in the **Federal Register**. The notice will provide information regarding the opportunity for written comment from the public. Written comment will be the primary avenue for public input as to whether or not the proposed product modification complies with applicable statutory provisions and Commission rules.

The PAEA anticipates a different form of review than what was provided for classification changes under previous legislation. The primary focus of the review will be on compliance with the statutory requirements for proper categorization of the Postal Service product as either market dominant or competitive. Review of the operational parameters of the product and the financial basis of the product typically will be minimal. The Postal Service's request will be reviewed as presented. Participant input into the review process will be through notice and comment. The Commission will review

each request for compliance with applicable statutory provisions and Commission rules with consideration of the views expressed in public comments.

Rule 3020.34 outlines the review procedures. If the requested modification appears to be in compliance with applicable statutory provisions and Commission rules, the Commission may approve the modification without further proceedings. This is consistent with providing the Postal Service flexibility and with the after-the-fact review anticipated by the PAEA. If the request does not appear to be in compliance, the Commission will provide an explanation to the Postal Service and, if appropriate, institute a proceeding to further consider the request. Where minor problems are discovered, the Commission may provide the Postal Service with the opportunity to modify its request to bring the request into compliance.

Rule 3020.35 provides options for further consideration of a request where there is an indication that the request is not in compliance. Consideration will begin with the Commission convening a conference to identify issues and discuss appropriate approaches for exploring relevant issues. In preparation for the conference, the Commission will request written statements of positions that identify the issues and solicit proposals for further review procedures. Shortly after the conclusion of the conference, the Commission will issue a procedural ruling on how to proceed with the request. The Commission preserves options ranging from immediately approving the request, to providing an opportunity for a hearing, to instituting any other action appropriate to the nature of issues involved.

C. Subpart C—Requests Initiated by Users of the Mail To Modify the Product Lists Described Within the Mail Classification Schedule

Rule 3020.50 provides the procedure for users of the mail to propose modifications to the market dominant and competitive product lists as specified by 39 U.S.C. 3642(a). To allow the Postal Service to be the first to initiate proposals to modify product lists, rules in subpart C will not become effective until 6 months after the rules in subpart B become effective.

In general, the rules in subpart C parallel the rules discussed above in subpart B applicable to Postal Service requests. The notable exceptions are discussed below.

In many instances, a Postal Service request will be supported by a Governors' decision. Typically, a Governors' decision will not be available for modification requests initiated by users of the mail. Thus, a user of the mail does not have a requirement to provide a Governors' decision in support of its request. Rule 3220.5, *cf.* rule 3020.31(b).

A user of the mail may or may not have informed the Postal Service of its intent to file a request. Thus, rule 3020.54 directs the Secretary of the Commission to provide a copy of the request to the Postal Service. At the same time, the Postal Service is given an opportunity to provide its initial views, within 28 days, as to the request and to suggest appropriate Commission action. The initial views provided by the Postal Service play an important part in the review process. With a request initiated by the Postal Service, it is presumed that the request is feasible to implement and consistent with the operational plans and goals of the Postal Service. This may or may not be the case for requests initiated by users of the mail.

The review of a request under rule 3020.55 is more complex than a review of a Postal Service request under rule 3020.34 because the initial views of the Postal Service must be considered. It would be impractical to proceed with a request that was operationally not feasible for the Postal Service to implement, or inconsistent with Postal Service policies and goals. With this in mind, if the proposed modification is in compliance with statutory provisions and Commission rules, the Commission may approve the modification without further proceedings, but only to the extent that the request is consistent with the Postal Service's views. If the request does not appear in compliance with applicable statutory provisions, Commission rules, or is not consistent with the views of the Postal Service, the Commission will either reject the request, or if appropriate, institute proceedings to further consider the request under rule 3020.56.

D. Subpart D—Proposal of the Commission To Modify the Product Lists Described Within the Mail Classification Schedule

Rule 3020.70 provides the procedure for the Commission to propose modifications to the market dominant and competitive product lists as specified by 39 U.S.C. 3642(a). To allow the Postal Service to be the first to initiate proposals to modify product lists, rules in subpart C will not become effective until 6 months after the rules in subpart B become effective.

In general, the rules in subpart D parallel the rules discussed above in subpart B applicable to Postal Service requests. The notable exceptions are discussed below.

As with a request initiated by a user of the mail, a Governors' decision will not be available for modification proposals initiated by the Commission. Thus, the Commission does not have a requirement to provide a Governors' decision in support of its request. The Commission will, however, provide its explanation for initiating the docket. Rule 3220.71, *cf.* rule 3020.31(b).

To formally start the review process, rule 3020.74 directs the Secretary of the Commission to provide a copy of the Commission proposal to the Postal Service. As with a request initiated by a user of the mail, the Postal Service is given an opportunity to provide its initial views as to the proposal and to suggest appropriate Commission action, within 28 days. The initial views provided by the Postal Service play an equally important role in the review process, whether the request was initiated by a user of the mails or proposed by the Commission.

The review of a request under rule 3020.75 is similar to a request initiated by a user of the mail under rule 3020.55 in that the initial views of the Postal Service must be considered. With this in mind, if the proposed modification is in compliance with statutory provisions and Commission rules, the Commission may approve the modification without further proceedings, but only to the extent that the request is consistent with the Postal Service's views. If the request does not appear in compliance with applicable statutory provisions, Commission rules, or is not consistent with the views of the Postal Service, the Commission will either withdraw the proposal, or if appropriate, institute proceedings to further consider the proposal under rule 3020.76.

E. Subpart E—Requests Initiated by the Postal Service To Update the Mail Classification Schedule

The accuracy and timeliness of the Mail Classification Schedule are important as the Commission will rely on the Mail Classification Schedule when undertaking its regulatory responsibilities. Users of the mail also may rely on the Mail Classification Schedule to form the basis for understanding and utilizing Postal Service products and services and presenting their positions before the Commission. This subpart provides a simplified path for the Postal Service to provide necessary updates to the Mail Classification Schedule.

The Postal Service is in the best position to provide timely and accurate descriptions of its products. Rule 3020.90 requires the Postal Service to assure that the product descriptions (i.e., all information about a product appearing in the Mail Classification Schedule) accurately reflect the current offerings of Postal Service products and services.

There are inherent limits on the scope or magnitude of any update allowable under subpart E. Specifically excluded are updates that would modify the market dominant or the competitive product lists. Implicitly excluded are updates that might be governed by other rules such as changes to rates and fees. A proposed update may not change the nature of a service to such an extent that it effectively creates a new product or eliminates an existing product. This subpart is not intended for such changes.

Within these limitations, however, this subpart allows the Postal Service the flexibility to update provisions of the Mail Classification Schedule with minimal review. To prevent abuse, other checks and balances always are available such as the compliant process. This is consistent with both allowing the Postal Service flexibility and providing after-the-fact review where appropriate.

The simplified path provided by rule 3020.91 to make changes to the descriptions of the products and services described within the Mail Classification Schedule only requires the Postal Service to provide notice to the Commission prior to the effective date of a proposed change. While preserving the Commission's editorial rights in the Mail Classification Schedule, rule 3020.92 indicates that the Commission intends to implement requested appropriate updates to the Mail Classification Schedule. There is no provision requiring review of the substance of such changes. The document will be updated to coincide with the effective date of the change determined by the Postal Service.

F. Subpart F—Size and Weight Limitations for Mail Matter

The Postal Service may establish size and weight limitations for mail matter pursuant to 39 U.S.C. 3682. Subpart F requires the Postal Service to include size and weight limitations for mail matter in the Mail Classification Schedule to provide visibility to users of the mail and provide information necessary for the Commission to fulfill its statutory role. For market dominant mail matter, the Commission will provide notice of the proposed update in the **Federal Register** and allow public comment. If the Commission finds the proposed update in accordance with the policies and the applicable criteria of title 39, the Mail Classification Schedule will be updated to coincide with the effective date of the proposed change. If the Commission finds the proposed update not in accordance with the policies and the applicable criteria of title 39, the Commission will take such action as it deems appropriate. For competitive mail matter, the Postal Service simply provides notice of an update to the Mail Classification Schedule pursuant to subpart E. The Commission does not review proposed updates to weight and size limitations of competitive mail matter.

V. Ordering Paragraphs

It is ordered:

1. The Commission proposes to amend its rules of practice and procedure as shown below. The proposed amendments involve revising rule 5, 39 CFR 3001.5, by amending rules 5(r) and (s) and adding new rules 5(t) and (u); and adding new parts 3010, Rules Applicable to Rate Adjustments for Market Dominant Products; 3015, Regulation of Rates for Competitive Products; and 3020, Product Lists.

2. Interested persons may submit comments by September 14, 2007.

3. Interested persons may submit reply comments by September 28, 2007.

4. The United States Postal Service shall submit, by September 14, 2007, a draft mail classification schedule containing a market dominant product list and a competitive product list consistent with the discussion in chapter III, section E.4.

5. Interested persons may submit comments concerning the draft mail classification schedule by September 28, 2007.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

ATTACHMENT A.—COMMENTS TO REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING

Participant	Title	Filing date
Advo, Inc. (Advo)	Comments of Advo, Inc. in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	Reply Comments of Advo, Inc. in Response to Advance Notice of Proposed Rulemaking.	May 7, 2007.
	Comments of Advo, Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Reply Comments of Advo, Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	July 3, 2007.
Akerman Senterfitt Wickwire Gavin	Submission of Comments	April 2, 2007.
Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council (ANM–NAPM–NPPC).	Comments of Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking.	April 6, 2007.
	Reply Comments of Alliance of Nonprofit mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking.	May 7, 2007.
Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. (ANM–MPA).	Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. on Advance Notice of Proposed Rulemaking.	April 6, 2007.

ATTACHMENT A.—COMMENTS TO REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING—Continued

Participant	Title	Filing date
	Reply Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. on Advance Notice of Proposed Rulemaking.	May 7, 2007.
	Initial Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, 2007. Inc. on Further Advance Notice of Proposed Rulemaking (Order No. 15).	June 18, 2007.
	Reply Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. on Further Advance Notice of Proposed Rulemaking (Order No. 15).	July 3, 2007.
Amazon.com	Statement of Paul Misener, Vice President for Global Public Policy on Behalf of Amazon.com at Wilmington, Delaware Field Hearing on July 9, 2007.	July 9, 2007.
American Business Media (ABM)	Initial Comments of American Business Media	April 6, 2007.
American Business Media, Greeting Card Association, and Newspaper Association of America (ABM–GCA–NAA).	Joint Comments of American Business Media, Greeting Card Association, and Newspaper Association of America With Respect to the Complaint Process.	April 6, 2007.
American Postal Workers Union, AFL–CIO (APWU)	Initial Comments of the American Postal Workers Union, AFL–CIO, in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	Reply Comments of the American Postal Workers Union, AFL–CIO.	May 7, 2007.
	Initial Comments of the American Postal Workers Union, AFL–CIO, in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Reply Comments of the American Postal Workers Union, AFL–CIO, in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	July 3, 2007.
Association for Postal Commerce (PostCom)	Initial Comments of PostCom in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	Reply Comments of the Association for Postal Commerce.	May 7, 2007.
	Comments of PostCom in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Joint Comments on OCA Positions	July 3, 2007.
	Reply Comments of PostCom in Response to Second Advance Notice of Proposed Rulemaking.	July 3, 2007.
Association of Priority Mail Users, Inc. (APMU)	Association of Priority Mail Users, Inc. Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 2.	April 6, 2007.
	Association of Priority Mail Users, Inc. Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 15.	June 18, 2007.
	Association of Priority Mail Users, Inc. Reply Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 15.	July 3, 2007.
Senators Collins and Carper	PRC Comments from Senators Collins and Carper	April 11, 2007.
DigiStamp, Inc.	Comments of DigiStamp	April 2, 2007.
Direct Marketing Association, Inc. (DMA)	Direct Marketing Association, Inc. Initial Comments Pursuant to PRC Order No. 2.	April 6, 2007.
	Direct Marketing Association, Inc. Reply Comments Pursuant to PRC Order No. 2.	May 7, 2007.
	Direct Marketing Association, Inc. Reply Comments Pursuant to PRC Order No. 15.	July 3, 2007.
Discover Financial Services LLC (DFS)	Reply Comments of Discover Financial Services LLC.	May 7, 2007
	Further Comments of DFS Services LLC	July 16, 2007.

ATTACHMENT A.—COMMENTS TO REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING—Continued

Participant	Title	Filing date
DST Systems, Inc., DST Output, Inc. and DST Mailing Service, Inc..	Statement of Mury Salls on Behalf of DST Systems, Inc., DST Output, Inc., and DST Mailing Service, Inc., at Kansas City Field Hearing June 22, 2007.	June 26, 2007.
Federal Express Corporation (FedEx)	Comments of Federal Express Corporation	April 5, 2007.
Greeting Card Association (GCA).	Comments of the Greeting Card Association in Response to Advance Notice of Proposed Rulemaking.	April 6, 2007.
	Reply Comments of the Greeting Card Association	May 7, 2007.
	Comments of the Greeting Card Association in Response to Second Advance Notice of Proposed Rulemaking.	June 18, 2007.
	Reply Comments of the Greeting Card Association in Response to Second Advance Notice of Proposed Rulemaking.	July 3, 2007.
Hallmark Cards, Inc.	Statement of Don Hall, Jr., President and CEO, Hallmark Cards, Inc. at Kansas City, Missouri Field Hearing, June 22, 2007.	June 26, 2007.
International Mailers' Advisory Group	Comments on Behalf of the International Mailers' Advisory Group.	April 6, 2007.
JP Morgan Chase & Co.	Statement of Daniel C. Emens on Behalf of JP Morgan Chase & Co. at Wilmington, Delaware Field Hearing on July 9, 2007.	July 9, 2007.
Jon Mulford Associates	Comments of Jonathan Mulford on Behalf of John Mulford Associates Regarding Docket No. RM2007–1.	March 14, 2007.
Los Angeles Times	Statement of David D. Hiller, Publisher, Los Angeles Times at Los Angeles Field Hearing on June 28, 2007.	June 28, 2007.
Mail Order Association of America (MOAA)	Comments of Mail Order Association of America	April 6, 2007.
	Reply Comments of Mail Order Association of America.	May 7, 2007.
	Response of the Mail Order Association of America to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Reply Comments of Mail Order Association of America to Comments Filed in Response to Second Notice of Proposed Rulemaking.	July 3, 2007.
Major Mailers Association (MMA).	Initial Comments of Major Mailers Association	June 18, 2007.
The McGraw-Hill Companies, Inc.	Reply Comments of The McGraw-Hill Companies, Inc. Pursuant to Order No. 2.	May 7, 2007.
McBride, Ken	Statement of Ken McBride at Los Angeles Field Hearing on June 28, 2007.	June 28, 2007.
	Reply Comments of The McGraw-Hill Companies, Inc. in Response to Supplemental Comments of the United States Postal Service on the Classification Process.	July 6, 2007.
Meredith Corporation	Statement of Randy Stumbo, Director of Distribution and Postal Affairs for Meredith Corporation, at Kansas City, Missouri Field Hearing on June 22, 2007.	June 26, 2007.
The Nation	Comments of The Nation on Docket RM2007–1	June 19, 2007.
National Association of Homebuilders	Comments of National Home Association of Home Builders.	June 18, 2007.
National Association of Letter Carriers (NALC)	National Association of Letter Carriers' Response to Other Parties' Comments on Proposed Rulemaking Concerning Exigency Clause and Future Complaint Procedures.	May 7, 2007.
National Association of Presort Mailers (NAPM)	Comments of the National Association of Presort Mailers.	June 18, 2007.
National Catholic Development Conference	Statement of Sr. Georgette Lehmuth, OSF on Behalf of National Catholic Development Conference at Wilmington, Delaware Field Hearing on July 9, 2007.	July 9, 2007.
National Newspaper Association (NNA)	Comments of the National Newspaper Association (NNA).	April 6, 2007.

ATTACHMENT A.—COMMENTS TO REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING—Continued

Participant	Title	Filing date
National Newspaper Association (NNA) and Missouri Press Association.	Statement of Dave Berry, Vice President, Community Newspaper Publishers, Inc. and Publisher of the Bolivar Herald-Free Press, Bolivar, Missouri on Behalf of the NNA and Missouri Press Association, at Kansas City Field Hearing June 22, 2007.	June 26, 2007.
National Postal Policy Council (NPPC)	Comments of National Postal Policy Council in Response to Further Advance Notice of Proposed Rulemaking.	June 18, 2007.
National Postal Policy Council and National Association of Presort Mailers (NPPC–NAPM).	Reply Comments of National Postal Policy Council and National Association of Presort Mailers in Response to Further Advance Notice of Proposed Rulemaking.	July 3, 2007.
Newgistics, Inc.	Initial Comments of Newgistics, Inc	April 6, 2007.
Newspaper Association of America (NAA)	Comments of the Newspaper Association of America.	March 30, 2007.
	Reply Comments of the Newspaper Association of America.	May 7, 2007.
	Comments of the Newspaper Association of America on Second Advance Notice of Proposed Rulemaking.	June 18, 2007.
	Reply Comments of the Newspaper Association of America on Second Advance Notice of Proposed Rulemaking.	July 3, 2007.
Office of the Consumer Advocate (OCA)	OCA Comments in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	OCA Comments in Reply to Those Filed in Response to Order No. 2.	May 7, 2007.
	Office of the Consumer Advocate Comments in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Office of the Consumer Advocate Reply Comments in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	July 3, 2007.
	Office of the Consumer Advocate Comments in Response to Supplemental Comments of the United States Postal Service on the Classification Process.	July 3, 2007.
Parcel Shippers Association (PSA)	Comments of the Parcel Shippers Association	April 6, 2007,
	Reply Comments of Parcel Shippers Association to Comments of United Parcel Service.	May 7, 2007.
	Errata to Reply Comments of Parcel Shippers Association to Comments of United Parcel Service.	May 8, 2007.
	Reply Comments of Parcel Shippers Association to Comments of United Parcel Service and Comments of the Office of the Consumer Advocate [Revised Filing].	May 8, 2007.
	Response of the Parcel Shippers Association to Second Advance Notice of Proposed Rulemaking.	June 18, 2007.
	Reply of Parcel Shippers Association to Comments Filed in Response to Second Notice of Proposed Rulemaking.	July 3, 2007.
Pepperdine University	Statement of John Carper on Behalf of Pepperdine University at Los Angeles Field Hearing on June 28, 2007.	June 28, 2007.
Pitney Bowes Inc.	Initial Comments of John C. Panzar on Behalf of Pitney Bowes Inc. in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	Initial Comments of Pitney Bowes Inc. in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	Reply Comments of Pitney Bowes Inc. in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	May 7, 2007.

ATTACHMENT A.—COMMENTS TO REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING—Continued

Participant	Title	Filing date
	Initial Comments of Pitney Bowes Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Reply Comments of Pitney Bowes Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	July 3, 2007.
	Statement of Michael Monahan, Executive Vice President and President, Mailing Solutions and Services, on Behalf of Pitney Bowes Inc. at Wilmington, Delaware Field Hearing on July 9, 2007.	July 9, 2007.
Sprint-Nextel	Initial Comments of Sprint-Nextel.	April 6, 2007.
Stamps.com	Submission of Comments of Stamps.com	April 6, 2007.
	Reply Comments of Stamps.com	May 7, 2007.
	Stamps.com Comments	June 18, 2007.
Tension Envelope Corporation	Statement of William S. Berkley, President and CEO, Tension Envelope Corporation at the Kansas City, Missouri Field Hearings on June 22, 2007.	June 26, 2007.
Time Warner Inc.	Initial Comments of Time Warner Inc. in Response to Commission Order No. 2.	April 6, 2007.
	Reply Comments of Time Warner Inc. to Initial Comments in Response to Commission Order No. 2.	May 7, 2007.
	Comments of Time Warner Inc. In Response to Commission Order No. 15.	June 18, 2007.
United Parcel Service (UPS)	Comments of United Parcel Service in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	April 6, 2007.
	Reply Comments of United Parcel Service in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	May 7, 2007.
	Comments of United Parcel Service in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	June 18, 2007.
	Reply Comments of United Parcel Service in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking.	July 3, 2007.
United States Postal Service (USPS)	Initial Comments of the United States Postal Service.	April 6, 2007.
	Reply Comments of the United States Postal Service.	May 7, 2007.
	Initial Comments of the United States Postal Service on the Second Advance Notice of Proposed Rulemaking.	June 18, 2007.
	Supplemental Comments of the United States Postal Service on the Classification Process.	June 19, 2007.
	Reply Comments of the United States Postal Service on the Second Advance Notice of Proposed Rulemaking.	July 3, 2007.
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak).	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 2.	April 6, 2007.
	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 2.	May 7, 2007.
	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 15.	June 18, 2007.

ATTACHMENT A.—COMMENTS TO REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING—Continued

Participant	Title	Filing date
	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Regulations Establishing a System of Ratemaking in Response to Commission Order No. 15.	July 3, 2007.
Williams–Sonoma Inc.	Statement of James West, Director, Postal and Government Affairs, on Behalf of Williams–Sonoma Inc. at Los Angeles Field Hearing on June 28, 2007.	June 28, 2007.
YourAuctionCompany.com	Statement of Adam and Wendy Leidhecker, Chief Executive Officers, on Behalf of YourAuctionCompany.com at Wilmington, Delaware Field Hearing on July 9, 2007.	July 9, 2007.

List of Subjects

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3010

Administrative practice and procedure, Postal Service.

39 CFR Part 3015

Administrative practice and procedure, Postal Service.

39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission proposes to amend 39 CFR chapter III as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. Revise the authority citation for part 3001 to read as follows:

Authority: 39 U.S.C. 404(d); 503; 3622; 3633; 3661, 3652.

2. Amend § 3001.5 as follows:
a. Revise paragraphs (r) and (s); and
b. Add paragraphs (t) and (u).

Subpart A—Rules of General Applicability

§ 3001.5 Definitions.

* * * * *

(r) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract. A negotiated service agreement is not a rate of general applicability.

(s) *Postal service* refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

(t) *Product* means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.

(u) *Rate or class of general applicability* means a rate or class that is available to all mailers equally on the same terms and conditions.

3. Add part 3010 to read as follows:

PART 3010—RULES APPLICABLE TO RATE ADJUSTMENTS FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

Sec.
3010.1 Applicability.
3010.2 Types of rate adjustments for market dominant products.
3010.3 Type 1–A rate adjustment—in general.
3010.4 Type 1–B rate adjustment—in general.
3010.5 Type 2 rate adjustment—in general.
3010.6 Type 3 rate adjustment—in general.
3010.7 Schedule of regular rate changes.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1 Rate Adjustments)

3010.10 Procedures.
3010.11 Limit on size of rate increases.
3010.12 Source of CPI–U data for purposes of annual limitation.
3010.13 Proceedings for Type 1–A and Type 1–B rate adjustment filings.
3010.14 Contents of notice of rate adjustment.

Subpart C—Rules for Applying the Price Cap

3010.20 Test for compliance with the annual limitation.
3010.21 Calculation of annual limitation.
3010.22 Calculation of less than annual limitation.
3010.23 Calculation of percentage change in rates.
3010.24 Treatment of volume associated with negotiated service agreements.
3010.25 Limitation on unused rate adjustment authority rate adjustments.
3010.26 Calculation of unused rate adjustment authority.
3010.27 Application of unused rate adjustment authority.
3010.28 Maximum size of unused rate adjustment authority rate adjustments.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

3010.40 Negotiated service agreements.
3010.41 Procedures.
3010.42 Contents of notice of agreement in support of a negotiated service agreement.
3010.43 Data collection plan.

Subpart E—Rules for Rate Adjustments for Exigent Circumstances (Type 3 Rate Adjustments)

3010.60 Applicability.
3010.61 Contents of exigent requests.
3010.62 Supplemental information.
3010.63 Treatment of unused rate adjustment authority.
3010.64 Expeditious treatment of exigent requests.
3010.65 Special procedures applicable to exigent requests.
3010.66 Deadline for Commission decision.

Authority: 39 U.S.C. 503; 3622.

Subpart A—General Provisions

§ 3010.1 Applicability.

The rules in this part implement provisions in the Postal Accountability and Enhancement Act (PAEA) establishing ratesetting policies and procedures for market dominant products. With the exception of exigency-based rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments and the Commission's assessment of their compliance with provisions establishing an annual limitation, unused rate adjustment authority, or standards for

negotiated service agreements, as applicable. Exigency-based rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

§ 3010.2 Types of rate adjustments for market dominant products.

(a) There are four types of rate adjustments for market dominant products. A Type 1–A rate adjustment, authorized under 39 U.S.C. 3622(d)(1)(D), is based on the statutory annual limitation. A Type 1–B rate adjustment, authorized under 39 U.S.C. 3622(d)(2)(C), is based on an exception to the annual limitation, and is referred to as unused rate adjustment authority. A Type 2 rate adjustment, authorized under 39 U.S.C. 3622(c)(10), is based on a negotiated service agreement. A Type 3 rate adjustment, authorized under 39 U.S.C. 3622(d)(1)(E), is based on exigent circumstances.

(b) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority.

(c) The Postal Service may combine Types 1–A, 1–B and 2 rate adjustments for purposes of filing with the Commission.

§ 3010.3 Type 1–A rate adjustment—in general.

(a) A Type 1–A rate adjustment represents the usual type of adjustment to rates of general applicability.

(b) A Type 1–A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1–A rate adjustment for any class that is less than the applicable change in CPI–U results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent adjustment for that class, subject to the expiration terms in § 3010.26(d).

§ 3010.4 Type 1–B rate adjustment—in general.

(a) A Type 1–B rate adjustment is a rate adjustment which uses unused rate adjustment authority in whole or in part. A rate adjustment using unused rate adjustment authority may not result in a rate that exceeds the applicable annual limitation plus 2 percentage points.

(b) Unused rate adjustment authority in each class may be applied to rate adjustments in the same class for up to 5 years.

§ 3010.5 Type 2 rate adjustment—in general.

A negotiated service agreement rate adjustment entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

§ 3010.6 Type 3 adjustment—in general.

(a) A Type 3 rate adjustment is a request for an exigency-based rate adjustment. It is authorized only when justified by exceptional or extraordinary circumstances.

(b) An exigency-based rate adjustment is not subject to the inflation-based limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

§ 3010.7 Schedule of regular rate changes.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Changes. The Commission shall display the Schedule for Regular and Predictable Rate Changes on the Commission Web site, *http://www.prc.gov*.

(b) The Schedule for Regular and Predictable Rate Changes shall provide mailers with estimated implementation dates for future Type 1–A rate changes for each separate class of mail, should such changes be necessary and appropriate. Rate changes will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Changes shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate changes.

(d) The initial Schedule for Regular and Predictable Rate Changes must be filed within 90 days of the effective date of this rule. The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the schedule.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Changes, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Changes. In such case, the Postal Service should provide a succinct explanation for such variation with its Type 1–A filing. No explanation is required for changes involving smaller than predicted rate adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1 Rate Adjustments)

§ 3010.10 Procedures.

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1–A or Type 1–B rate adjustment for a market dominant postal product shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended rate implementation date.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended price changes include classification changes or operations changes likely to have material impact on mailers.

§ 3010.11 Limit on size of rate increases.

Rate increases for each class of market dominant products in any 12-month period are limited.

(a) Rates of general applicability are subject to an inflation-based limitation computed using CPI–U values as detailed in § 3010.12.

(b) An exception to the inflation-based limitation allows a limited annual recapture of unused rate authority. The amount of unused rate authority is measured separately for each class of mail.

(c) In any 12-month period the inflation-based limitation combined with the allowable recapture of unused rate authority equals the price cap applicable to each class of mail.

§ 3010.12 Source of CPI–U data for purposes of annual limitation.

The monthly CPI–U values needed for the calculation of the annual limitation under this part shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is ''CUUR0000SA0.''

§ 3010.13 Proceedings for Type 1–A and Type 1–B rate adjustment filings.

(a) The Commission will establish a docket for each rate adjustment filing, promptly publish notice of the filing in the **Federal Register**, post the filing on its Web site, and allow 20 days from the date of the filing for public comment.

(b) Public comments should address:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.21(b) are at or below the annual limitation established in § 3010.11; and

(2) Whether the planned rate adjustments are consistent with the policies of 39 U.S.C. 3622 and any subsequent amendments thereto.

(c) Within 14 days of the conclusion of the public comment period the Commission will determine whether the planned rate adjustments are consistent with the test for compliance with the annual limitation and issue a notice and order announcing its findings.

(1) If the planned rate adjustments are in compliance with the annual limitation and, if applicable, with the exception for unused rate adjustment authority, they may take effect; or

(2) If the planned rate adjustments are not in compliance with the annual limitation or with the exception for unused rate adjustment authority, the Commission shall explain the basis of its determination.

(d) If planned rate adjustments are not in compliance with the annual limitation or with the exception for unused rate adjustment authority, the Postal Service will submit an amended notice of rate adjustment and describe the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(e) The Commission will review any amended notice of rate adjustment for compliance with the annual limitation and the exception for unused rate adjustment authority and within 14 days issue a notice and order announcing its findings.

(1) If the planned rate adjustments are in compliance with the annual limitation or, if applicable, with the exception for unused rate adjustment authority, they may take effect. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(2) If the planned rate adjustments in an amended notice of rate adjustment are found to be not in compliance with the annual limitation or, if applicable, with the exception for unused rate adjustment authority, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

§ 3010.14 Contents of notice of rate adjustment.

(a) *General.* The Postal Service notice of rate adjustment must include the following information:

(1) A schedule of the proposed rates;

(2) The planned effective date(s) of the proposed rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) *Supporting technical information and justifications.* The notice of rate adjustment shall be accompanied by:

(1) The amount of the applicable change in CPI–U calculated as required by § 3010.21 or § 3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown, and all input values including all relevant CPI–U values are listed with citations to the original sources.

(2) A schedule showing unused rate authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown.

(3) The percentage change in rates for each class of mail calculated as required by § 3010.23. This information must be supported by workpapers in which all calculations are shown, and all input values including current rates, new rates, and billing determinants are listed with citations to the original sources.

(4) The amount of new unused rate authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26. All calculations are to be shown with citations to the original sources. If new unused rate authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service should explain the rationale underlying this rate adjustment.

(5) A schedule of the workshare discounts included in the proposed rates, and a companion schedule listing the avoided costs that underlie each such discount. The avoided cost figures must be developed from the most recent PRC Annual Compliance Report. This information must be supported by workpapers in which all calculations are shown, and all input values are listed with citations to the original sources.

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs.

(7) A discussion of how the proposed rates will help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

(c) *New workshare discounts.* Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount;

(2) All data, economic analyses, and other information believed to justify the discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) *Information required only when Type 1–B rate adjustments are proposed.* The notice of rate adjustment shall identify for each affected class how much existing unused rate authority is used in the proposed rates calculated as required by § 3010.27. All calculations are to be shown, including citations to the original sources.

Subpart C—Rules for Applying the Price Cap

§ 3010.20 Test for compliance with the annual limitation.

The appropriate annual limitation shall be applied to a measure of the rates paid by mail sent in each class for which rate adjustments are to be made to determine whether planned rates are consistent with the annual limitation.

§ 3010.21 Calculation of annual limitation.

The calculation of an annual limitation involves three steps. First, a simple average CPI–U index is

calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI–U index is similarly calculated by summing the 12 monthly CPI–U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the annual limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage. The formula for calculating an annual limitation is as follows: Annual Limitation = (Recent Average/Base Average) − 1.

§ 3010.22 Calculation of less than annual limitation.

(a) If a notice of rate adjustment is filed less than 1 year after the last Type 1–A or Type 1–B notice of rate adjustment applicable to an affected class of mail, then the annual limitation will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(b) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 1 year after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) − 1.

§ 3010.23 Calculation of percentage change in rates.

(a) The term *rate cell* as applied in the test for compliance with the annual limitation shall apply to each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. Thus, seasonal or temporary rates, for example, shall be identified and treated as rate cells separate and distinct from the corresponding non-seasonal or permanent rates.

(b) For each class of mail, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the current rate for the respective cell and the resulting products are summed. In the case of seasonal or temporary rates, the most recently applied rate shall be considered the current rate. Then, the same set of rate cell volumes are multiplied by the corresponding planned rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^{N} \left(R_{i,n}\right)\left(V_i\right)}{\sum_{i=1}^{N} \left(R_{i,c}\right)\left(V_i\right)} \right) - 1$$

N = number of rate cells in the class
i = denotes a rate cell (i = 1, 2, ..., N)
$R_{i\,n}$ = planned rate of rate cell i
$R_{i\,c}$ = current rate of rate cell i
V_i = volume of rate cell i

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Whenever possible, adjustments shall be based on known mail characteristics. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

§ 3010.24 Treatment of volume associated with negotiated service agreements.

(a) Mail volumes sent at non-tariff rates under negotiated service agreements are to be included in the calculation of percentage change in rates as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (*e.g.*, because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and provide the rationale for its assumptions.

§ 3010.25 Limitation on unused rate adjustment authority rate adjustments.

Unused rate adjustment authority rate adjustments may only be applied together with inflation-based limitation rate adjustments or when inflation-based limitation rate adjustments are not possible. Unused rate adjustment authority rate adjustments may not be used in lieu of an inflation-based limitation rate adjustment.

§ 3010.26 Calculation of unused rate adjustment authority.

(a) Unused rate adjustment authority accrues during the entire period between Type 1 rate adjustments.

(b) When notices of rate adjustments are filed 12 months apart or less, either the annual or partial year limitation (developed pursuant to § 3010.21(a) or § 3010.22(b) respectively) is used to measure the accrued unused rate authority. In either circumstance, the new unused rate authority for each class is equal to the difference between the maximum allowable percentage change in rates under the applicable rate limitation and the actual percentage change in rates for that class.

(c) When a notice of rate adjustment is filed more than 12 months after the previous notice of rate adjustment, unused rate authority is computed in three steps.

(1) The unused rate authority for the 12 months represented by the annual limitation is computed as described in paragraph (b) of this section.

(2) The additional unused rate authority accrued is measured by dividing the Base Average applicable to the instant notice of rate adjustment (as developed pursuant to § 3010.21(a)) by the Recent Average utilized in the previous notice of rate adjustment (as developed pursuant to § 3010.21(a)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(3) The results from step one and step two are added together.

(d) Unused rate adjustment authority lapses 5 years after the date of filing of the notice of rate adjustment leading to its computation.

§ 3010.27 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates

for the class and the price cap shall be subtracted from the existing unused rate authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

§ 3010.28 Maximum size of unused rate adjustment authority rate adjustments.

Unused rate adjustment authority rate adjustments for any class may not exceed the applicable annual limitation described in § 3010.21 plus the lesser of:

(a) 2 percent; or

(b) The sum of any unused rate adjustment authority for that class.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10) mandating that special classifications:

(a) Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)), or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

§ 3010.41 Procedures.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended rate implementation date.

§ 3010.42 Contents of notice of agreement in support of a negotiated service agreement.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the Mail Classification Schedule based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement. This shall include at a minimum:

(b) *General.* Each notice of agreement will include:

(1) A copy of the negotiated service agreement;

(2) The planned effective date(s) of the proposed rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(5) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

(c) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement; and

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement.

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

(d) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

(e) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

(f) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

§ 3010.43 Data collection plan.

The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10). This shall include, at a minimum, a plan for providing the following annualized information on a yearly basis within 60 days of the date of implementation of a proposed agreement:

(a) The change in net financial position as a result of the agreement. This calculation shall include for each year of the agreement:

(1) The actual mailer-specific costs, volumes, and revenues of the Postal Service; and

(2) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service.

(3) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(b) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(c) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

Subpart E—Rules for Rate Adjustments in Exigent Circumstances (Type 3 Rate Adjustments)

§ 3010.60 Applicability.

The Postal Service may request to increase rates for market dominant products in excess of the annual limitation on the percentage changes in rates described in § 3010.11(c) due to extraordinary or exceptional circumstances. Such requests will be known as exigent requests.

§ 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstance(s) giving rise to the request, and a complete explanation of how both the requested overall increase,

and the specific rate increases requested, relate to those circumstances;

(4) A full discussion of why the requested increases are necessary to enable the Postal Service, under best practices of honest, efficient and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested increases are reasonable and equitable as between types of users of market dominant products;

(6) An explanation of when the exigent increase will be rescinded. If the period that the exigent increases will be in is intended to be permanent or temporary. If the increase is intended to be temporary, the request should include a discussion of when and under what circumstances the increase would be rescinded, in whole or in part;

(7) A justification for exigent treatment which analyzes why the circumstance giving rise to the request was neither foreseeable nor avoidable by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in § 3010.61(a).

§ 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate increases requested.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate authority for each class of mail as of the date of the request.

(b) Pursuant to an exigent request, increases may use accumulated unused rate adjustment authority in amounts greater than the limitation described in § 3010.28.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate increases in excess of the price cap for any class of mail.

§ 3010.64 Expeditious treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) When the Commission receives a request for exigent rate increases, it will publish a notice in the **Federal Register** describing the request and inviting public participation.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in § 3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with § 3001.9, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

(1) The sufficiency of the justification for an exigent rate increase;

(2) The adequacy of the justification for increases in the amounts requested by the Postal Service; and

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of a Postal Service request for an exigent rate increase.

4. Add part 3015 to read as follows:

PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

Sec.
3015.1 Scope.
3015.2 Increase in rates of general applicability.
3015.3 Decrease in rates of general applicability.
3015.4 Change in class of general applicability.
3015.5 Rate or class not of general applicability.
3015.6 Sufficiency of information.
3015.7 Standards for compliance.

Authority: 39 U.S.C. 503; 3633.

§ 3015.1 Scope.

Rules in this part are applicable to competitive products.

§ 3015.2 Increase in rates of general applicability.

(a) When the Postal Service determines to increase a rate or rates of general applicability, it shall file notice of the increase with the Commission no later than the date of publication of the decision in the **Federal Register** concerning such change, but at least 30 days before the effective date of the increase.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

§ 3015.3 Decrease in rates of general applicability.

(a) When the Postal Service determines to decrease a rate or rates of general applicability, it shall file notice of the decrease with the Commission no later than the date of publication of the decision in the **Federal Register** concerning such change, but at least 30 days before the effective date of the decrease.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient annualized revenue and cost data to demonstrate that each effected competitive product will be in

compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.4 Change in class of general applicability.

(a) In the case of a change in class of general applicability, the Postal Service shall file notice of the change with the Commission no later than the date of publication of the decision in the **Federal Register**, but at least 30 days before the effective date of the increase.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and the record of proceedings regarding such decision.

§ 3015.5 Rate or class not of general applicability.

(a) When the Postal Service determines to add or change a rate or class not of general applicability, it shall file notice of its decision with the Commission at least 15 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, the rate and class decision, and the record of proceedings regarding such decision.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient annualized revenue and cost data to demonstrate that each effected competitive product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.6 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines additional information is necessary to enable it to evaluate whether competitive products will be in compliance with 39 U.S.C. 3633(a), it may, in its discretion, require the Postal Service to provide additional information as deemed necessary.

§ 3015.7 Standards for compliance.

For purposes of determining competitive products' compliance with 39 U.S.C. 3633, the Commission will apply the following standards:

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission will use competitive products' attributable costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b).

(c) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively is, at a minimum, 5.5 percent of the Postal Service's total institutional costs.

5. Add part 3020 to read as follows:

PART 3020—PRODUCT LISTS

Subpart A—Mail Classification Schedule

Sec.
3020.1 Applicability.
3020.10 General.
3020.11 Initial Mail Classification Schedule.
3020.12 Publication of the Mail Classification Schedule.
3020.13 Contents of the Mail Classification Schedule.
3020.14 Notice of change.

Subpart B—Requests Initiated by the Postal Service to Modify the Product Lists Described Within the Mail Classification Schedule

3020.30 General.
3020.31 Contents of a request.
3020.32 Supporting justification.
3020.33 Docket and notice.
3020.34 Review.
3020.35 Further proceedings.

Subpart C—Requests Initiated by Users of Mail to Modify the Product Lists Described Within the Mail Classification Schedule

3020.50 General.
3020.51 Contents of a request.
3020.52 Supporting justification.
3020.53 Docket and notice.
3020.54 Postal Service notice and reply.
3020.55 Review.
3020.56 Further proceedings.

Subpart D—Proposal of the Commission to Modify the Product Lists Described Within the Mail Classification Schedule

3020.70 General.
3020.71 Contents of a proposal.
3020.72 Supporting justification.
3020.73 Docket and notice.
3020.74 Postal Service notice and reply.
3020.75 Review.
3020.76 Further proceedings.

Subpart E—Requests Initiated by the Postal Service to Update the Mail Classification Schedule

3020.90 General.
3020.91 Modifications.
3020.92 Implementation.

Subpart F—Size and Weight Limitations for Mail Matter

3020.110 General.
3020.111 Limitations applicable to market dominant mail matter.
3020.112 Limitations applicable to competitive mail matter.

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

Subpart A—Mail Classification Schedule

§ 3020.1 Applicability.

(a) The rules in this part provide for establishing a Mail Classification Schedule. The Mail Classification Schedule shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists specified in the Mail Classification Schedule shall be consistent with the market dominant product list specified in 39 U.S.C. 3621(a) and the competitive product list specified in 39 U.S.C. 3631(a).

(b) Once established, the Mail Classification Schedule may be modified subject to the procedures specified in this part. See part 3025 of this chapter for rules applicable to Mail Classification Schedule modifications for market tests of experimental products.

§ 3020.10 General.

The Mail Classification Schedule shall consist of two parts. Part One shall specify the list of market dominant products and include the explanatory information specified in § 3020.13(a). Part Two shall specify the list of competitive products and include the explanatory information specified in § 3020.13(b).

§ 3020.11 Initial Mail Classification Schedule.

The Postal Service shall file with the Commission a proposed Mail Classification Schedule within 30 days of enactment of this rule. The proposed Mail Classification Schedule shall reflect the market dominant and competitive product lists as specified in 39 U.S.C. 3621(a) and 39 U.S.C. 3631(a) respectively. The Commission shall cause notice of the Postal Service filing to be published in the **Federal Register**. The notice shall provide the opportunity for public comment. After consideration of the proposed Mail Classification Schedule and public comment, the Commission shall incorporate a Mail Classification Schedule into the Commission's rules,

and cause notice thereof to be published in the **Federal Register**. Thereafter, the Mail Classification Schedule may be modified as specified by Commission rule.

§ 3020.12 Publication of the Mail Classification Schedule.

(a) *Incorporation by reference.* Section 552(a) of title 5 U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that ''* * * matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.'' In conformity with that provision, and with 39 U.S.C. 503, and as provided in this part, the Postal Regulatory Commission hereby incorporates by reference in this part, the Mail Classification Schedule, a looseleaf document published and maintained by the Postal Regulatory Commission.

(b) *Availability of the Mail Classification Schedule.* (1) Copies of the Mail Classification Schedule, both current and previous issues, are available during regular business hours for reference and public inspection at the Postal Regulatory Commission's Reading Room located at 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001. The Mail Classification Schedule, both current and previous issues, also are available on the Internet at *http://www.prc.gov*. A copy of the Mail Classification Schedule may be obtained by contacting the Postal Regulatory Commission's Docket Section in Washington, DC.

(2) Interested persons may receive electronic notification of updates to the Mail Classification Schedule by contacting the Postal Regulatory Commission's Docket Section in Washington, DC.

(3) Interested persons may inspect a copy of the Mail Classification Schedule at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

(c) *Amendments to the Mail Classification Schedule.* (1) Except final regulations published as provided in paragraph (c)(2) of this section, only notices rather than complete text of changes made to the Mail Classification Schedule are published in the **Federal Register**. These notices are published in the form of one summary transmittal letter for each issue of the Mail Classification Schedule. A complete issue of the Mail Classification Schedule, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register.

(2) When the Postal Regulatory Commission invites comments from the public on a proposed change to the Mail Classification Schedule, the proposed change and, if adopted, the full text of the final regulation is published in the **Federal Register**.

(3) For references to amendments to the Mail Classification Schedule adopted under paragraph (c)(2) of this section after issuance of the most recent transmittal letter (termed Summary of Changes in the Mail Classification Schedule) listed below, see § 3020.12(c) in the List of CFR sections affecting title 39 of the Code of Federal Regulations.

Transmittal letter for issue	Dated	**Federal Register** publication
1	[TBD]	[TBD FR TBD]

(d) [Reserved]

§ 3020.13 Contents of the Mail Classification Schedule.

The Mail Classification Schedule shall provide:

(a) The list of market dominant products, including:

(1) The class of each market dominant product;

(2) The description of each market dominant product;

(3) A schedule listing for each market dominant product the current rates and fees;

(4) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(5) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(6) Where applicable, the identification of a product as a non-postal product.

(b) The list of competitive products, including:

(1) The description of each competitive product;

(2) A schedule listing for each competitive product of general applicability the current rates and fees;

(3) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(4) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(5) Where applicable, the identification of a product as a non-postal product.

§ 3020.14 Notice of change.

Whenever the Postal Regulatory Commission modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the **Federal Register**. The notice shall:

(a) Include the current list of market dominant products and the current list of competitive products appearing in the Mail Classification Schedule;

(b) Indicate how and when the previous product lists have been modified; and

(c) Describe other changes to the Mail Classification Schedule as necessary.

Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists Described Within the Mail Classification Schedule

§ 3020.30 General.

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list appearing in the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

§ 3020.31 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Provide the name and class, if applicable, of each product that is the subject of the request;

(c) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or transfer a product from the market

dominant list to the competitive list or from the competitive list to the market dominant list;

(d) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; or

(3) A non-postal product.

(e) Provide all supporting justification upon which the Postal Service proposes to rely; and

(f) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.32 Supporting justification.

Supporting justification shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C.;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output without risk of losing a significant level of business to other firms offering similar products.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

§ 3020.33 Docket and notice.

The Commission shall institute a docket for consideration of each request to modify the market dominant or the competitive product lists. The Commission shall cause notice of each docket to be published in the **Federal Register**, which includes:

(a) A description of the request;

(b) Direction to obtain further information in regard to the request, if any;

(c) Direction for participation in the docket;

(d) Designation of an officer of the Commission to represent the interests of the general public; and

(e) Information regarding an opportunity for written comment addressing compliance with statutory provisions and applicable Commission rules in regard to the proposed modification.

§ 3020.34 Review.

The Commission shall review the request and responsive comments. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists;

(b) Institute further proceedings to consider all or part of the request if it finds that there is substantial likelihood that the modification is inconsistent with statutory policies or Commission rules, and explain its reasons for not approving the request to modify the market dominant and competitive product lists;

(c) Provide an opportunity for the Postal Service to modify its request; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.35 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the concerns expressed by the Commission. Written statements commenting on the Commission's concerns shall be requested, to be filed 7 days prior to the conference. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the request;

(c) Explain the reasons for not going forward with additional proceedings and approve the request to modify the market dominant and competitive product lists; or

(d) Direct other action as the Commission may consider appropriate.

Subpart C—Requests Initiated by Users of the Mail To Modify the Product Lists Described Within the Mail Classification Schedule

§ 3020.50 General.

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list appearing in the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

§ 3020.51 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or

(3) A non-postal product.

(d) Provide all supporting justification upon which the proponent of the request proposes to rely; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.52 Supporting justification.

Supporting justification shall be in the form of a statement from a knowledgeable proponent of the request who attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the

applicable criteria of chapter 36 of 39 U.S.C.;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output without risk of losing a significant level of business to other firms offering similar products.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly, as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

§ 3020.53 Docket and notice.

The Commission shall institute a docket for consideration of each request to modify the market dominant or the competitive product lists. The Commission shall cause notice of each docket to be published in the **Federal Register**, which includes:

(a) A description of the request;

(b) Direction to obtain further information in regard to the request, if any;

(c) Direction for participation in the docket;

(d) Designation of an officer of the Commission to represent the interests of the general public; and

(e) Information regarding an opportunity for written comment addressing compliance with statutory provisions and applicable Commission rules in regard to the proposed modification.

§ 3020.54 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the request. Within 28 days of the filing of the request, the Postal Service shall provide its preliminary views in regard to the request. The Postal Service may include suggestions for appropriate Commission action in response to the request.

§ 3020.55 Review.

The Commission shall review the request, Postal Service reply, and public comment to determine whether the proposed modification to the market dominant and competitive product lists complies with applicable statutory requirements and the Commission's rules, and whether the proposed modification is consistent with the position of the Postal Service as expressed in its reply. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

(b) Reject the request;

(c) Institute further proceedings to consider the request to modify the market dominant and competitive product lists; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.56 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the merits of going forward with the request. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the request;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

Subpart D—Proposal of the Commission To Modify the Product Lists Described Within the Mail Classification Schedule

§ 3020.70 General.

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list provided within the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

§ 3020.71 Contents of a proposal.

A proposal to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the proposal;

(b) Indicate whether the proposal would add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the proposal is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products, or

(3) A non-postal product.

(d) Provide justification supporting the proposal; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.72 Supporting justification.

Supporting justification shall:

(a) Provide an explanation for initiating the docket;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, subtraction, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality;

(4) Decrease output without risk of losing a significant level of business to other firms offering similar products.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18

U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product involved on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Postal Service and users of the mail of the nature, scope, significance, and impact of the proposed modification.

§ 3020.73 Docket and notice.

The Commission shall institute a docket for consideration of each proposal to modify the market dominant or the competitive product lists. The Commission shall cause notice of each docket to be published in the **Federal Register**, which includes:

(a) A description of the proposal;

(b) Direction to obtain further information in regard to the proposal, if any;

(c) Direction for participation in the docket;

(d) Designation of an officer of the Commission to represent the interests of the general public; and

(e) Information regarding an opportunity for written comment addressing compliance with statutory provisions and applicable Commission rules in regard to the proposed modification.

§ 3020.74 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the notice of proposal. Within 28 days of the filing of the proposal, the Postal Service shall provide its preliminary views in regard to the proposal. The Postal Service may include suggestions for appropriate further procedural steps.

§ 3020.75 Review.

The Commission shall review the Postal Service reply and public comment. The Commission shall either:

(a) Approve the proposal to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

(b) Withdraw the proposal;

(c) Institute further proceedings to consider the proposal, identifying relevant issues that may require further development; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.76 Further proceedings.

If the Commission determines that further proceedings are appropriate, a conference shall be scheduled to consider the merits of going forward with the proposal. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the proposal;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

Subpart E—Requests Initiated by the Postal Service To Conform the Mail Classification Schedule

§ 3020.90 General.

The Postal Service shall assure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of Postal Service products and services.

§ 3020.91 Modifications.

The Postal Service shall submit corrections to product descriptions in the Mail Classification Schedule, that do not constitute a proposal to modify the market dominant product list or the competitive product list as defined in § 3020.30, by filing notice of the proposed change with the Commission no later than 15 days prior to the effective date of the proposed change.

§ 3020.92 Implementation.

The Commission shall review the proposed corrections for formatting and conformance with the structure of the Mail Classification Schedule, and subject to editorial changes, shall update the Mail Classification Schedule to coincide with the effective date of the proposed change.

Subpart F—Size and Weight Limitations for Mail Matter

§ 3020.110 General.

Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

§ 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format.

(b) The Commission shall provide notice of the proposed update in the **Federal Register** and seek public comment on whether the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C.;

(c) If the Commission finds the proposed update in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C., the Commission shall review the proposed Mail classification Schedule language for formatting and conformance with the structure of the Mail classification Schedule, and subject to editorial changes, shall change the Mail Classification Schedule to coincide with the effective date of the proposed update.

(d) If the Commission finds the proposed update not in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C., the Commission may direct other action as deemed appropriate.

§ 3020.112 Limitations applicable to competitive mail matter.

The Postal Service shall notify the Commission of updates to size and weight limitations for competitive mail matter pursuant to subpart E of this part.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Bering Sea and Aleutian Islands Management Area; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0612242903–7445–03; I.D. 112006I]

RIN 0648–AU48

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 85 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) as partially approved by NMFS, and to implement recent changes to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule modifies the current allocations of Bering Sea and Aleutian Islands management area (BSAI) Pacific cod total allowable catch (TAC) among various harvest sectors and seasonal apportionments thereof, establishes a hierarchy for reallocating projected unharvested amounts of Pacific cod from certain sectors to other sectors, revises catcher/processor (CP) sector definitions, modifies the management of Pacific cod incidental catch that occurs in other groundfish fisheries, eliminates the Pacific cod nonspecified reserve, subdivides the annual prohibited species catch (PSC) limits currently apportioned to the Pacific cod hook-and-line gear fisheries between the catcher vessel (CV) and CP sectors, and modifies the sideboard restrictions for American Fisheries Act (AFA) CP vessels. In addition, this final rule increases the percentage of the BSAI Pacific cod TAC apportioned to the Community Development Quota (CDQ) Program. The proposed rule for Amendment 85 included regulations that would have subdivided the annual PSC limits currently apportioned to the Pacific cod trawl fisheries among trawl sectors. However, NMFS disapproved these regulations. Therefore, this final rule does not subdivide the annual PSC limits for Pacific cod trawl fisheries among trawl sectors. This final rule is necessary to implement Amendment 85 and reduce uncertainty about the availability of yearly harvests within sectors caused by reallocations and maintain stability among sectors in the BSAI Pacific cod fishery. This final rule also is necessary to partially implement recent changes to the Magnuson-Stevens Act that require a total allocation of 10.7 percent of the TAC of each directed fishery to the CDQ Program starting January 1, 2008. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Effective January 1, 2008.

ADDRESSES: Copies of Amendment 85 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or via the Internet at the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Background

Amendment 85 was adopted by the Council in April 2006 to modify the current allocations of BSAI Pacific cod among various harvesting sectors. Currently, the BSAI Pacific cod non-CDQ TAC is fully distributed among the following eight competing harvest sectors: jig, fixed gear (pot and hook-and-line gear) CVs less than 60 ft (<18.3 m) length overall (LOA), hook-and-line CVs greater than or equal to 60 ft (≥18.3 m) LOA, hook-and-line catcher/processor vessels (CPs), pot CVs less than 60 ft (≥18.3 m) LOA, pot CPs, trawl CPs, and trawl CVs. Several FMP amendments, implemented beginning in 1994, have allocated Pacific cod among these sectors. Additional background on the prior history of Pacific cod allocations among different fishery sectors and the development of Amendment 85 is contained in the preamble to the proposed rule (72 FR 5654; February 7, 2007).

Amendment 85 modifies the non-CDQ sector allocations currently in place to better reflect historical dependency and use by sector of the Pacific cod resource. The allocations were based in part on each sector's historical retained catch in addition to socioeconomic and community concerns. One of the fundamental issues identified in the Council's problem statement was the need to revise the existing allocations to better reflect historical retained catch by sector, thus reducing the need for frequent and significant reallocations of quota toward the end of the year from sectors that are unable or otherwise do not intend to harvest their entire allocation. However, the allocations to the small boat sectors are intended to expand entry-level, local opportunities in the BSAI Pacific cod fishery. Other than providing for this expansion, the allocations of Pacific cod non-CDQ TAC are intended to formally institutionalize the historical pattern of utilization of this resource.

Amendment 85 and the proposed rule to implement Amendment 85 as originally submitted by the Council included provisions for the CDQ Program that allocated 10 percent of the Pacific cod TAC to the CDQ Program as a directed fishing allocation, created an incidental catch allowance of Pacific cod for the CDQ Program, and referred to the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241 (Coast Guard Act) as the basis for changes to the CDQ Program Pacific cod allocation. These provisions were consistent with requirements set forth in the Magnuson-Stevens Act, as amended by the Coast Guard Act, at the time Amendment 85 was submitted by the Council for Secretarial review. The Notice of Availability (NOA) for Amendment 85 was published in the **Federal Register** on December 7, 2006 (71 FR 70943), with a 60–day comment period that ended February 5, 2007.

During review by the Secretary of Commerce (Secretary) of Amendment 85, the CDQ provisions in the Magnuson-Stevens Act were amended once again by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, Public Law 109–479 (Magnuson-Stevens Reauthorization Act), enacted on January 11, 2007. The Magnuson-Stevens Act now requires that allocations to the CDQ Program, including Pacific cod, increase to ''a total allocation (directed and nontarget combined) of 10.7 percent effective January 1, 2008,'' and that the total allocation may not be exceeded. As a result of the Magnuson-Stevens Reauthorization Act, the portions of Amendment 85 to the FMP that addressed the CDQ Program provisions were no longer consistent with the

Magnuson-Stevens Act. On March 7, 2007, the Secretary partially approved Amendment 85, disapproving the CDQ Program provisions as inconsistent with the Magnuson-Stevens Act. As approved, Amendment 85 revised the current BSAI Pacific cod allocations of TAC among various non-CDQ harvest sectors (Table 1), changed incidental catch allowances, removed the groundfish reserve for Pacific cod, and added a new appendix to the FMP.

Shortly after enactment of the Magnuson-Stevens Reauthorization Act, NMFS determined that the CDQ portions of the proposed rule as submitted by the Council were inconsistent with the newly amended Magnuson-Stevens Act, and returned the rule to the Council for revision pursuant to section 304(b) of the Magnuson-Stevens Act. The Council revised the CDQ portions of the proposed rule for Amendment 85 to incorporate the changes brought about by the Magnuson-Stevens Reauthorization Act, including a 10.7–percent allocation of Pacific cod to the CDQ Program. The Council submitted the revised proposed rule to NMFS, and it was published in the **Federal Register** on February 7, 2007 (72 FR 5654). The 45–day comment period on the proposed rule ended March 26, 2007. NMFS received a total of 16 letters on Amendment 85 and the proposed rule that contained 79 unique comments. A summary of these comments and the responses by NMFS are provided under Response to Comments below.

Elements of the Final Rule

A detailed review of the provisions of Amendment 85 and its implementing rule is provided in the preamble to the proposed rule (72 FR 5654; February 7, 2007), and is not repeated here. The proposed rule is available via the Internet and from NMFS (see ADDRESSES). The following provides a list and brief review of the regulatory changes made by this final rule to the management of the BSAI Pacific cod fishery. NMFS' rationale for approving portions of Amendment 85 and the regulatory provisions in this final rule is contained in the agency's response to comments.

- Increase the percentage of the BSAI Pacific cod TAC apportioned to the CDQ Program to 10.7 percent;
- Revise the allocations of BSAI Pacific cod non-CDQ TAC among various gear sectors;
- Modify the management of Pacific cod incidental catch that occurs in other groundfish fisheries;
- Eliminate the Pacific cod nonspecified reserve;
- Establish a hierarchy for the reallocation of projected unused sector allocations to other ectors;
- Adjust the seasonal allowances of Pacific cod to various sectors;
- Subdivide among sectors the annual PSC limits apportioned to the Pacific cod hook-and-line gear fisheries;
- Modify the sideboard restrictions for Pacific cod that are applied to the CP vessels listed as eligible under the AFA; and
- Revise the definition for AFA trawl CP and add definitions for hook-and-line CP, non-AFA trawl CP, and pot CP.

As described above, the Magnuson-Stevens Act now requires that 10.7 percent of the annual Pacific cod TAC be allocated to the CDQ reserve for directed and nontarget fishing combined, effective January 1, 2008. The 10.7 percent Pacific cod allocation to the CDQ reserve will be established annually in the harvest specifications process required under § 79.20(c). The CDQ reserve will continue to be deducted from the Pacific cod TAC before the remaining Pacific cod TAC is allocated to the other fishing sectors. All catch of Pacific cod by any vessel that is groundfish CDQ fishing, and by any vessel ≥60 ft (18.3 m) LOA that is halibut CDQ fishing, will continue to accrue against the CDQ group's annual allocation of Pacific cod and the CDQ groups will continue to be prohibited from exceeding their annual allocations of Pacific cod.

Nine individual non-CDQ sectors will receive separate BSAI Pacific cod allocations. The allocations to the identified sectors were selected using retained legal catch history, including fishmeal, from 1995 through 2003, and other socioeconomic and community considerations. The allocations better reflect historical dependency and use by each sector, with specific consideration to allow for additional growth in the small boat, entry-level sectors. These allocations are listed in Table 1. Because Pacific cod has been harvested by the current sectors since the beginning of 2007 under the current allocation scheme, and the number of sectors and the overall amount of Pacific cod available to those sectors as an allocation and by season will change with this amendment, the Amendment 85 sector allocations cannot be implemented mid-year. Therefore, the allocations, and the final rule implementing Amendment 85, will be effective January 1, 2008. NMFS will amend the 2007–2008 harvest specifications to reflect the changes to the Pacific cod TAC allocations.

TABLE 1. PERCENT SECTOR ALLOCATIONS OF PACIFIC COD NON-CDQ TAC

Sector	% Allocation
Jig vessels	1.4
Hook-and-line/pot CV <60 ft (18.3 m) LOA	2.0
Hook-and-line CV ≥60 ft (18.3 m) LOA	0.2
Hook-and-line CP	48.7
Pot CV ≥60 ft (18.3 m) LOA	8.4
Pot CP	1.5
AFA trawl CP	2.3
(8) Non AFA trawl CP	13.4
Trawl CV	22.1

Currently, NMFS sets aside an amount of Pacific cod from some sectors' allocations as an incidental catch allowance for use by those sectors when they are directed fishing for groundfish other than Pacific cod. NMFS establishes an incidental catch allowance either through the annual harvest specifications process or inseason. Under this final rule, an incidental catch allowance for the fixed gear sectors will continue to be established at the beginning of the fishing year by the Regional Administrator during the annual harvest specifications process. The incidental catch allowance for the fixed gear sectors typically has been set at 500 mt. The trawl sectors currently do not have an incidental catch allowance established at the beginning of the fishing year. NMFS has not specified an incidental catch allowance for Pacific cod in the trawl fisheries in the recent past because the trawl sectors typically do not catch an amount of Pacific cod that would necessitate a directed fishing prohibition. Also, the seasonal apportionments to the trawl sectors have ensured that a sufficient amount of Pacific cod is left for incidental catch in groundfish trawl fisheries other than Pacific cod later in the year. However, because NMFS anticipates that the trawl sectors will fully harvest the Pacific cod allocations under Amendment 85, NMFS also anticipates it will need to establish an incidental catch allowance for each trawl sector. Under this final rule, each trawl sector will have a separate incidental catch allowance so that no trawl sector can erode another trawl sector's total allocation and NMFS will develop incidental catch

allowances for the trawl sectors on an inseason basis, rather than through the annual harvest specification process. Determining incidental catch needs inseason as fisheries progress will provide NMFS with more flexibility to adjust incidental catch needs for each trawl sector as a trawl sector's needs change.

Current regulations for the annual harvest specifications process require that 15 percent of the BSAI TAC for Pacific cod be placed in the nonspecified reserve. Half of the nonspecified reserve, or 7.5 percent of TAC, is apportioned to the groundfish CDQ reserve. NMFS typically apportions the remainder of the Pacific cod reserve back to the non-CDQ Pacific cod TAC because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocation. The Council and NMFS determined that the Pacific cod reserve is no longer needed because a direct allocation to the CDQ reserve is specified, and because the Pacific cod TAC is fully allocated among CDQ and non-CDQ harvesting sectors and is fully harvested. Therefore, this final rule removes regulations requiring that 15 percent of the Pacific cod TAC be placed in the nonspecified reserve during a fishing year.

Under current regulations, if the Regional Administrator determines that a sector will be unable to harvest the entire amount of Pacific cod allocated to that sector, NMFS reallocates the projected unused amount of Pacific cod to other sectors to obtain optimum yield from the BSAI Pacific cod fishery. This procedure will continue under this final rule, but reallocation decisions will be based in part on the new reallocation hierarchy established in this final rule, and also will take into account the capability of a sector to harvest an additional amount of Pacific cod. The reallocation hierarchy is fully described in the proposed rule and in the regulatory text below; therefore, that description is not repeated here. In general, NMFS will reallocate projected unused allocations in any inshore sector (i.e., CV sectors) primarily to other inshore sectors before reallocating that amount to any offshore sector (i.e., CP sectors) and, secondarily, within a gear type before reallocating that amount to another gear type. This reallocation hierarchy is consistent with the Council's decision to increase harvest opportunities for fleets delivering shoreside and represents a reasonable balance of National Standard 4, that allocations should be fair and equitable to all fishermen, and National Standard 8, to consider the importance of fishery resources to fishing communities. Although the intent of Amendment 85 is to revise sector allocations to better reflect historic dependence and use by sector and thus reduce the frequency and amount of inseason reallocations, the Council and the public noted that some reallocations are likely to continue.

Under existing regulations, Pacific cod allocations are further apportioned by season for most gear sectors to protect prey availability for Steller sea lions (SSLs). The overall BSAI Pacific cod fishery is limited to seasonal percentages of TAC of no more than 70 percent between January 1 and June 10, and 30 percent between June 10 and December 31. Because this final rule modifies non-CDQ sector allocations, this final rule also modifies the seasonal allowances applicable to these sectors to maintain the overall 70/30 seasonal split for all gear types combined and to maintain, to the extent possible, the current percentage of the Pacific cod TAC harvested in the first half of the year by the non-CDQ sectors. Therefore, this final rule adjusts the seasonal allowances for each sector in response to the changes in sector allocations. This final rule also changes the jig sector seasonal allowances from 40–20–40 to 60–20–20. For the Pacific cod allocation to the CDQ Program, this final rule adds a prohibition to § 679.7(d) to clarify the current management measure that the CDQ groups are prohibited from exceeding the seasonal allowances of Pacific cod that are appropriate for the gear types that they use to catch Pacific cod CDQ. Also, the regulations regarding CDQ trawl seasonal allowances are revised to maintain the division between trawl CP and trawl CV that exists in the current regulations. The BSAI Pacific cod sector allowances for each sector, including CDQ, by season, as those seasons are specified under § 679.23(e)(5), are listed in Table 2.

TABLE 2. SEASONAL ALLOWANCES OF BSAI PACIFIC COD EXPRESSED AS A PERCENTAGE OF EACH SECTOR=S TOTAL ALLOCATION

Gear Type	A season	B season	C season
CDQ Trawl	60%	20%	20%
CDQ Trawl CV	70%	10%	20%
CDQ Trawl CP	50%	30%	20%
Non-CDQ trawl CV	74%	11%	15%
Non-CDQ trawl CP	75%	25%	0%
CDQ Hook-and-line CP, and hook-and-line CV ≥60 ft (18.3 m) LOA	60%	40%	no C season
Non-CDQ hook-and-line CP, hook-and-line CV ≥60 ft (18.3 m) LOA, pot CP, and pot CV ≥60 ft (18.3 m) LOA	51%	49%	no C season
CDQ jig vessels	40%	20%	40%
Non-CDQ jig vessels	60%	20%	20%
All other nontrawl vessels	no seasonal allowance	no seasonal allowance	no seasonal allowance

Total non-CDQ percentage	1/1 - 6/10 = 68%	6/10 - 12/31 = 32%
Total CDQ and non-CDQ percentage	1/1 - 6/10 = 67%	6/10 - 12/31 = 33%

Any unused portion of a seasonal allowance of Pacific cod from any sector other than the jig sector will continue to be reallocated to that sector's remaining seasons during the current fishing year. The Regional Administrator will continue to reallocate any projected unused portion of a seasonal allowance of Pacific cod from the jig sector to the <60 ft (18.3 m) LOA fixed gear CV sector. Under this final rule, NMFS will reallocate a projected unused portion of the seasonal allowance for the jig sector C season on or about September 1 of each year, if possible, to provide the last rollover from the jig sector when the <60 ft (18.3 m) LOA fixed gear CV sector may still be on the fishing grounds.

The total amount of nontrawl halibut PSC for the non-CDQ fisheries currently is 833 mt of mortality. Typically, 775 mt is apportioned to the hook-and-line Pacific cod fishery and 58 mt to other nontrawl groundfish fisheries. This final rule does not change the total amount of nontrawl halibut PSC mortality allocated to the hook-and-line Pacific cod sectors or to the other nontrawl groundfish fisheries.

Currently, the annual Pacific cod hook-and-line halibut PSC allowance is apportioned among three seasons. A seasonal halibut PSC allowance in the second season has not been specified in recent years; thus, a hook-and-line directed fishery for Pacific cod has not operated in the summer months. Halibut bycatch rates are typically high during the second season. The hook-and-line CP sector generally supports not providing a halibut PSC limit in the second season because the high halibut bycatch rates could close the directed Pacific cod fishery prior to the allocation being fully harvested. However, the hook-and-line CV sector, which is constrained by the same PSC limit, is comprised of smaller vessels with slower catch rates and a relatively small Pacific cod allocation compared to the hook-and-line CP sector. To enable the hook-and-line CVs to fish for Pacific cod in the summer months when the weather is more favorable for these smaller vessels, this final rule divides the halibut PSC allowance annually specified for the hook-and-line Pacific cod fishery between two fishery sectors: the hook-and-line CP sector and the hook-and-line CV sector (CVs ≥60 ft (18.3 m) LOA and CVs <60 ft (18.3 m) LOA combined). NMFS can provide varying amounts of halibut PSC by season to each sector, tailoring PSC limits to suit the needs and timing of each sector. NMFS decision to disapprove the proposed subdivision of annual PSC limits apportioned to the Pacific cod trawl gear fisheries is explained below.

Sideboards are harvesting and processing restrictions that were placed on AFA trawl CVs and AFA trawl CPs operating in the BSAI pollock fishery to protect the interests of other fishermen and processors that did not benefit directly from the AFA. This final rule removes the sideboard limits of BSAI Pacific cod for the AFA trawl CPs. The establishment of a separate Pacific cod allocation to this sector negates the need for the BSAI Pacific cod sideboard which protects the historic share of the non-AFA trawl CP sector from being eroded by the AFA trawl CP vessels. For the same reason, BSAI Pacific cod is added to the list of exceptions to the groundfish species or species groups for which sideboard harvest limits are calculated for the listed AFA trawl CPs. The halibut and crab PSC sideboard limits for both AFA sectors are maintained as currently specified in regulations.

This final rule modifies or adds definitions for CPs in accordance with the Consolidated Appropriations Act, 2005 (Public Law 108–447). This final rule revises the definition for AFA trawl CP and adds new definitions for hook-and-line CP, non-AFA trawl CP (also known as the head-and-gut sector), and pot CP. The new definition for hook-and-line CP is substantively consistent with the Consolidated Appropriations Act's definition for the longline CP subsector. Also, the definition for ''CDQ reserve'' is revised to change and update terms and to generalize the cross reference. All of the various housekeeping revisions described in the proposed rule also are made by this final rule.

Element of the Proposed Rule Not Approved

NMFS did not approve one regulatory change recommended by the Council and included in the proposed rule. For reasons explained below, NMFS did not approve the Council's recommendation to further apportion the Pacific cod trawl fishery crab and halibut PSC allowances among the trawl sectors.

PSC regulations pertain to certain species caught in the process of fishing for groundfish that must be accounted for, but cannot be retained unless the vessel participates in the halibut and salmon donation program at § 679.26. Regulations at § 679.21 establish PSC limits for Pacific halibut, three species of crab, salmon, and herring in the BSAI trawl groundfish fisheries, and a separate Pacific halibut PSC limit for nontrawl gear. These regulations also establish allocations of each PSC limit between the CDQ and non-CDQ fisheries and a process for apportioning PSC among non-CDQ fisheries.

Currently, the total amount of halibut PSC mortality for trawl gear in the non-CDQ fisheries is apportioned in the annual harvest specifications process among four fisheries, including the Pacific cod fishery. The current process of fishery apportionment will continue under this final rule. Generally, about 1,400 mt of halibut PSC mortality is apportioned annually to the BSAI Pacific cod trawl fishery, but this amount and actual use can vary from year to year. Crab PSC limits fluctuate as resource abundance fluctuates.

In recent years, the trawl CV and trawl CP sectors' directed Pacific cod fisheries have closed most often (1) due to reaching the seasonal TAC, (2) to avoid exceeding specified halibut PSC allowances, or (3) because a fishing season has ended. Reaching a crab PSC limit results in closure of a specific area to directed fishing. Unlike reaching a halibut PSC limit, reaching a crab PSC limit typically does not close BSAI Pacific cod trawl fisheries, although occasional crab PSC closures have occurred in the past.

The Council recommended that the amount of halibut and crab PSC that would be apportioned to each trawl sector for the Pacific cod trawl fishery under this action be proportional to each sector's percentage of Pacific cod harvested in the Pacific cod target fishery from 1999 through 2003, including Pacific cod retained for meal production. Accordingly, the proposed rule divided the annual PSC allowance of halibut and crab specified for the Pacific cod trawl fishery category among the trawl sectors as follows: 70.7 percent for trawl CVs; 4.4 percent for AFA trawl CPs; and 24.9 percent for non-AFA trawl CPs. Because the AFA and non-AFA trawl CVs would share a Pacific cod allocation, the Council decided that this sector also should receive combined halibut and crab PSC allowances.

The Council intended the apportionment of halibut and crab PSC among the trawl gear sectors that target Pacific cod to allow each sector to better plan its operations by being able to manage its PSC use during the fishing year without its PSC being eroded by another sector. Because the Council's apportionment of halibut and crab PSC was proportional to a trawl sector's harvest of Pacific cod in a target fishery, those sectors that harvested Pacific cod primarily as a target species, rather than as a species caught incidentally in other groundfish fisheries, would have received proportionally higher PSC allowances. Under this apportionment,

the trawl CV and AFA trawl CP sectors would have received higher PSC allowances than they have historically used or needed, and the non-AFA trawl CP sector would have received significantly less PSC than it has historically used or needed to optimize groundfish harvest under current PSC limits.

During its deliberation on adoption of Amendment 85, the Council understood and acknowledged that the percentage of halibut and crab PSC apportioned to the non-AFA trawl CP sector could be constraining compared to average historic use, but chose not to modify its decision. The Council determined that the amount of PSC that would be apportioned to the non-AFA trawl CP sector would fall within the range of what this sector has caught historically.

Under the Council's recommendation and the proposed rule, the non-AFA trawl CP sector would have received 22 percent less halibut PSC and 37 percent less Zone 1 bairdi (*Chionoecetes bairdi*) crab PSC than it has used historically to prosecute its directed Pacific cod fishery and only about the average amount of opilio (*Chionoecetes opilio*) crab PSC. Conversely, the AFA trawl CP and the trawl CV sectors would have received about 200 percent and 40 percent more halibut PSC, 19 percent and 116 percent more bairdi crab PSC, and 3,144 percent and 20,904 percent more opilio crab PSC, respectively, than these sectors have used historically.

Regulations implementing the FMP must be consistent with the Magnuson-Stevens Act, including the national standards, and other applicable law. NMFS determined that further apportionment of halibut and crab PSC among Pacific cod trawl sectors as proposed by the Council is inconsistent with National Standards 1, 4, and 9 of the Magnuson-Stevens Act. National Standard 1 requires that fishery management measures prevent overfishing while maintaining optimum yield from each fishery, National Standard 4 requires allocations to be fair and equitable among affected fishermen, and National Standard 9 requires that bycatch and the mortality of any bycatch be minimized to the extent practicable. Under the existing open access management of the non-AFA Pacific cod trawl fishery, NMFS determined that the non-AFA trawl CP sector is unlikely to be able to harvest its entire allocation of Pacific cod with the significant reductions in the proposed amount of halibut and crab PSC as detailed above. This would result in a de facto reduction in the non-AFA trawl CP Pacific cod allocation and would likely reduce this sector's ability to harvest other targeted species. The Council did not provide any explanation as to why an additional reduction in this sector's harvest of Pacific cod and other target species not the subject of this final rule is appropriate or consistent with National Standard 4 or other applicable law. Additionally, because the amount of PSC allocated to the AFA trawl CP and the trawl CV sectors is so much greater than their historical needs, the proposed PSC allocations to these sectors may create a disincentive for these sectors to minimize their bycatch of prohibited species, which is not consistent with National Standard 9. Finally, because the non-AFA trawl CP sector harvests a significant majority of species other than pollock and Pacific cod, an inconsistency with National Standard 1 exists. The non-AFA trawl CP sector would likely not have PSC remaining from its Pacific cod fishery that could then be used to achieve optimum yield from its other BSAI groundfish fisheries.

Based on the reasons discussed above, therefore, NMFS disapproved the apportionment of the annual PSC allowances of halibut and crab mortality among the Pacific cod trawl gear sectors. Regulations pertaining to this element are not included in this final rule. These apportionments will continue to be specified during the annual harvest specifications process.

NMFS notes that a separate amendment to the FMP, Amendment 80, was approved by the Secretary on July 26, 2007. Amendment 80 primarily allocates several BSAI non-pollock trawl groundfish fisheries, halibut PSC, and crab PSC among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-AFA trawl CP sector. The proposed rule to implement Amendment 80 was published in the **Federal Register** on May 30, 2007 (72 FR 30052) and was available for public comment until June 29, 2007.

Changes in Regulations from the Proposed Rule to the Final Rule

NMFS made several changes to the proposed regulatory text in this final rule. First, NMFS has removed proposed § 679.21(e)(3)(v) from the final rule. Proposed § 679.21(e)(3)(v) included the proposed PSC allowances for the trawl sector which NMFS disapproved for the reasons explained above. Proposed § 679.21(e)(3)(vi) reverts back to § 679.21(e)(3)(v) in this final rule as a result of removing proposed § 679.21(e)(3)(v). NMFS also has removed references to proposed § 679.21(e)(3)(v) from the final rule.

Second, the proposed regulatory text at § 679.20(a)(7)(i)(B)(1) regarding CDQ seasonal allowances combined all CDQ trawl vessels into one group. This final rule revises the proposed regulatory text to maintain the division between trawl CP and trawl CV that exists in the current regulations. No changes to the CDQ Program seasonal allowances were intended by the Council.

Last, the proposed regulatory text at § 679.20(a)(7)(iii)(B) inadvertently included the heading ''trawl catcher/processor sectors.'' This heading is changed in this final rule to ''trawl gear sectors'' because this part of the reallocation hierarchy applies to all trawl gear sectors, not just the trawl CP sectors.

Response to Comments

As mentioned above, NMFS received 16 letters containing 79 unique comments during the public comment periods. Two non-industry letters were received and 14 letters were received from the fishing industry. A summary of those comments, grouped by subject matter, and NMFS' responses follow.

Comment on the Intent of Amendment 85

Comment 1: One commenter supports the intent of Amendment 85 to modify the allocations of Pacific cod by codifying the fishery as it is actually occurring with the goal of reducing inseason adjustments (reallocations) from the trawl sectors to the hook-and-line sectors. Another commenter supports the intent of Amendment 85 to modify the allocations of Pacific cod to various sectors to better reflect historic usage.

Response: NMFS notes the support for Amendment 85 and clarifies that one intention of this action is to better reflect historic use, not current use, as noted in this excerpt from the Council's problem statement: ''To reduce uncertainty and provide stability, allocations should be adjusted to better reflect historic use by sector. The basis for determining sector allocations will be catch history as well as consideration of socio-economic and community factors.''

Comments on Data Used

Comment 2: The catch history information used in Amendment 85 was based on the best scientific information available (1995–2003 WPR (Weekly Production Report) and fish ticket data for retained catch). Preliminary data from 2004 and 2005 were also considered. It is appropriate to use WPR data to calculate catch history by sector for the CPs because it is the only data set common to all CP vessels. The use of WPR data was well noticed to the

public. The non-inclusion of fishmeal was consistent with all previous Council actions involving allocation.

Response: NMFS agrees that the catch history information used to develop Amendment 85 and presented in the proposed rule was based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act. Only legally retained catch was used in determining harvest history to avoid rewarding sectors with a high discard rate of Pacific cod. However, data presented in the EA/RIR/initial regulatory flexibility analysis (IRFA) and considered by NMFS in its decision to approve the non-CDQ allocations in Amendment 85 did include cod destined for fishmeal production because it is legally retained catch. The analysis used data from Federal WPRs, which include fishmeal data, and the Alaska Department of Fish and Game (ADF&G) fish tickets to calculate sector specific harvest history. These databases were used because they are consistent across all sectors and every sector's production of Pacific cod is weighed and reported on WPRs and/or fish tickets.

Total harvest was calculated based on retained legal harvest (including Pacific cod that was turned into fishmeal as the primary product) from WPRs and ADF&G fish tickets. In addition, total harvest (retained and discarded cod, including fishmeal) from NMFS blend data, and the catch accounting database was provided in Section 3.3.5 (Table 3–24) of the analysis. The NMFS blend data and data from the catch accounting database (used since 2003) utilize observer data, shoreside processor landings data, and fish tickets. In the cod target fishery, blend data are calculated from partial haul samples, including discards. Observer estimates are extrapolated for some sectors because of varying levels of observer coverage. Because the AFA trawl CP sector is 100 percent observed, the best information available for that sector would be the blend data. However, not all sectors would be treated equally if blend data were used because not all sectors are 100 percent observed. Therefore, the decision by NMFS to use WPR data and ADF&G fish tickets, and to include cod destined for fishmeal in the determination of harvest history is fair and equitable, and is consistent with National Standards 2 and 4 of the Magnuson-Stevens Act.

Comment 3: The range of dates selected seriously over-weighted the pre-Amendment 46 period, an inept historical analogue to the current fishery and a period of time for which Amendment 85 was explicitly designed to supersede in order to better reflect current use and dependence. The express purpose of Amendment 85 is to conform allocations to existing realities. The years most relevant to existing realities are the most recent years and the Council failed to consider those years.

Current allocations are based on historical usage prior to 1997, and the Council's problem statement seeks to address the fact that ''the current allocations do not correspond with actual dependency and use by sectors.'' Allocations set in 1997 closely tracked actual usage at that time to determine what are now the current allocations. Therefore, any history prior to 1997 should not be used because it is different from the ''actual use'' which Amendment 85 is intended to reflect.

Beginning in 1998, Pacific cod had to be retained by all vessels as long as directed fishing was open; no sector should be penalized for discarded fish that were legally discarded prior to that. Comparing sectors that only target cod with sectors that both target and have incidental catches of cod is not comparing apples to apples. The Council considered data that contained only retained catch, so they understate the amount of Pacific cod the non-AFA trawl CPs needed to prosecute other fisheries in the years prior to 1998. Under the current regulatory scheme that fish would be retained and counted.

In 1999, the AFA identified a number of AFA vessels and granted them exclusive access to BSAI pollock. The non-AFA trawl CPs were excluded from targeting pollock and increased their harvest share of Pacific cod. All but one of the AFA trawl CPs ceased to target Pacific cod.

Rewarding one sector over the other for legal discard activity from 10 years prior to final Council action does not correspond to dependencies developed in light of the current management era, which began with a new cod allocation in 1997, 100 percent mandatory retention in 1998, and the AFA in 1999 which preempted the head-and-gut (H&G) fleet from the largest groundfish fishery in North America. Therefore, earlier years do not indicate ''present participation'' or ''actual use.''

Response: As stated in the response to Comment 1, the allocations established by Amendment 85 and this final rule are intended to better reflect a sector's historic use, not current use. In referencing the Council's problem statement, the commenter appears to equate ''actual'' with current, but this is not what the Council meant by ''actual.'' The problem statement also states, ''The basis for determining sector allocations will be catch history as well as consideration of socio-economic and community factors.'' One year or just a few recent years is not reflective of catch history and dependence over time. No one year in the history from 1995 to 2003 was given more weight than any other.

The Council had several options available in setting the allocation percentages, including the harvest histories from several specific set of years, and an option to select direct allocation percentages from within the range of analyzed percentages. The Council chose to select allocations for the non-CDQ sectors that were within the range of analyzed percentages, and that more closely represent an average of retained catch for most sectors from 1995 through 2003.

Harvest history for each sector was based on annual retained catch. The data presented in the EA/RIR/FRFA include historic harvest from 1995 through 2003 as the primary basis for determining historic use of Pacific cod by sector, although data from 2004 to 2005 are provided as well. The starting year of 1995 was chosen because it includes data from the early years of sector allocations of Pacific cod TAC that began in 1994 with the implementation of BSAI Amendment 24 to the FMP (59 FR 4009, January 28, 1994). This set of years also includes changes in Pacific cod harvest due to impacts beginning in 1998 from implementation of improved retention/improved utilization measures to reduce discards, from AFA legislation in 1999, and from Steller sea lion protection measures beginning in 2001, all of which had impacts on all sectors to varying degrees. Pacific cod has been a valuable species for a long time, therefore, it is important to also consider the time period before these major legislative and regulatory programs to determine historic dependence and use. Also, consideration of just three or four recent years does not show dependency by the sectors over time and may be unduly biased because of increased market demand for Pacific cod in recent years for some products, potential decreased participation due to BSAI crab rationalization, and the likelihood of competition for Pacific cod among sectors in anticipation of this action.

At the time the Amendment 85 analysis was initiated by the Council in late 2004, the data from 2003 were the most recent available. Rather than continually adding years as the action progressed, the data analyzed for the allocation options stopped with the data from 2003. The Council and NMFS

considered more recent (2004 and 2005) harvest data from the NMFS catch accounting database in reviewing harvest history to illustrate recent harvest trends as that information became available, but it was not available in the same format as the data from 1995 through 2003. However, for the reasons stated above, this two-year data set was not used as the sole basis for the allocations. Additionally, the data showed that some sectors increased their harvest of Pacific cod during the recent past, compared to their 1995 through 2003 harvest, and were not constrained by their allocation in doing so because they did not harvest their entire allocation. Not all sectors had the advantage of such flexibility. Therefore, based upon all these reasons, focusing on more recent years does not provide an equitable standard upon which to assess the dependence of Pacific cod by all sectors. The use of data from 1995 through 2003 provides a more appropriate basis to determine historic harvest share.

In 1994 under Amendment 24, the trawl sectors were allocated 54 percent of the Pacific cod TAC, the fixed gear sectors received 44 percent, and the jig gear sector received 2 percent. This allocation was approximately equal to the average percent of Pacific cod taken with trawl gear or fixed gear between 1991 and 1993. In 1997 under Amendment 46, the allocation to the trawl sector was reduced to 47 percent and then equally divided between trawl CPs and trawl CVs. The reduced allocation to the trawl sector was determined by an industry negotiating committee and closely represented the harvest percentages taken by trawl and fixed gear at that time while retaining the 2–percent allocation for jig gear. The split between trawl CVs and trawl CPs was agreed upon by a separate negotiation between representatives of the trawl sectors to maintain a directed fishery for trawl CVs which were more dependent on directed fishing for Pacific cod. These basic trawl and fixed gear percentage allocations of Pacific cod TAC have remained unchanged since 1997. The fixed gear sectors were divided in 2000 and the pot sectors in 2004, but the overall split between trawl and fixed gear sectors and between trawl CPs and trawl CVs did not change.

The high discard rates of Pacific cod is an issue that the Council has been addressing for some time. The problem statement for Amendment 46 states: ''Management measures are needed to ensure that the Pacific cod TAC is harvested in a manner which reduces discards in the target fisheries, reduces PSC mortality, reduces nontarget bycatch of Pacific cod and other groundfish species, takes into account the social and economic aspects of variable allocations and addresses impacts of the fishery on habitat.''

The Council's intent under Amendment 85 was to calculate historic catch by using retained harvest of Pacific cod, because Pacific cod is required to be retained (in both the directed fishery, and up to the maximum retainable allowance when the directed Pacific cod fishery is closed) and it was not the intent to ''reward'' sectors that have higher discards of Pacific cod. This is why discarded Pacific cod was not included in the harvest history data. All of the harvest data provided were considered in the allocation decision by the Council and by NMFS. Most sectors have incidental catch of Pacific cod in their fisheries. The exceptions are the jig and pot gear sectors. By using historic catch over the same set of years and using the same data set for all sectors (see response to Comment 2), all sectors were treated fairly and equitably, consistent with National Standard 4 of the Magnuson-Stevens Act.

Comment 4: The use of WPRs to calculate the round weight of cod harvested by the AFA trawl CP sector for the years after 1998 is a significant source of error in the catch history tables set forth in the draft analysis. The use of observer reports and scale weights is universally recognized as a more accurate way of calculating a vessel's total catch than the somewhat antiquated WPR approach. The use of WPR data as a basis for the AFA trawl CP catch history is inconsistent with the requirement that management measures be based on ''the best scientific evidence available.'' The draft analysis should be revised to clarify that observer data (not WPRs) represent the best available data for the post–1998 catch history of the AFA trawl CP sector.

Response: The Council's and NMFS' use of WPR data rather than NMFS blend data and the catch accounting database, which both use observer data as one component, is explained in the response to Comment 2. WPR data and blend data estimate catch using different methods. WPR data represents a consistent database across all sectors; every sector's product is weighed, and landed weights are converted to round weights. The blend data estimate catch based on vessel catch reports augmented by observer data, and are used for in-season management. The blend data use observer estimates of discards, which affect the total catch estimates. In the cod target fishery, observer estimates are based primarily on partial haul sampling. In general, CPs <125 ft (38.1 m) LOA are observed 30 percent of the time, and blend data use WPR data when there are no observer data available. Finally, during the years considered to establish allocations (1995 2003), the more accurate flow scales were used more extensively in the AFA CP sector than in other sectors. Because the AFA trawl CP sector is 100 percent observed, the best information available for that sector would be the blend data. However, blend data are not available by vessel length for the CV sectors, which primarily affects the <60 ft (18.3 m) fixed gear CVs. Also, the non-AFA trawl CPs <125 ft (38.1 m) LOA are observed 30 percent of the time, so WPR data are used when there are no observer data available. These two datasets rely on different estimation methods and do not provide identical estimates of catch by sector. Use of blend data for some sectors and WPR data for other sectors would be problematic because any estimation error among sectors could be exacerbated if different datasets are used to determine sector specific allocations. Therefore, the best available data when comparing Pacific cod harvests among all sectors for the determination of harvest history is WPR data and ADF&G fish tickets (see response to Comment 2). Acknowledging that observer data are used to monitor catch for this one sector because it is 100 percent observed would not change the decision on the amendment. Therefore, no changes will be made to the analysis concerning this subject.

Comment 5: The data used in the draft analysis excludes Pacific cod utilized in the production of meal from the AFA trawl CP's catch history. It is inappropriate for the draft analysis to exclude or otherwise discount Pacific cod used for meal production from any of the tables used to depict catch history for the AFA trawl CP sector. There is no justification for excluding the official catch data from an analysis that purportedly reflects the catch history of this sector. The combined effect of using WPR-based catch accounting to calculate the AFA trawl CP catch history and excluding the catch used to make meal results in an inaccurate estimate of the sector's catch history that understates the AFA trawl CP sector's historic use and dependency on cod. The draft analysis should be revised to clarify that meal is a ''legally retainable product'' insofar as that term is used in connection with Amendment 85 and other regulations governing the BSAI groundfish fishery; and that all legally retained cod taken as bycatch in

the directed pollock fishery will be included in the AFA trawl CP sector's catch history for purposes of Amendment 85.

Response: The concern about fishmeal not being included in calculations of harvest history was a result of some commenters relying on a draft analysis distributed prior to the April 2006 Council meeting. As explained in the response to Comment 2, WPR data represent the best available information for comparing Pacific cod catch across and among sectors. WPR data include Pacific cod destined for fishmeal. However, in the early development of the Amendment 85 analysis, data for Pacific cod destined for fishmeal were removed from the WPR data and Council analytical documents up to the April 2006 Council meeting continued to exclude fishmeal data. At the April 2006 Council meeting, in light of public comment, WPR data that included fishmeal data was provided for Council consideration. As explained in response to Comment 2, the history considered in setting non-CDQ allocation percentages in Amendment 85 included Pacific cod that was turned into fishmeal as the primary product. Several tables that incorporated fishmeal in the harvest history were presented to the Council in April 2006 for its consideration and similar tables were included in the Secretarial review draft analysis issued in January 2007. The analysis was not revised in light of this comment because the data on fishmeal were considered and included in setting the Pacific cod allocation to the AFA trawl CP sector and the historic catch data including fishmeal are presented in the analysis.

Comment 6: The H&G sector allocation of 13.4 percent is 0.2 percent less than the sector's straight 95–03 average. The action was taken in 2006, however the last year considered was 2003. This sector's ''historic use'' and ''actual dependency'' are not adequately reflected if 2004 and 2005 are not taken into consideration for a final action taken in 2006. The Magnuson-Stevens Act instructs that recency must be considered as well. By allocating the H&G sector an amount of cod less than its average harvest for the historical period of 1995 to 2003, the Council simply ignored the present participation consideration.

Response: NMFS disagrees that the non-AFA trawl CP sector was allocated an amount of Pacific cod that is less than its average historic harvest for the period 1995 to 2003 (average historic harvest). NMFS believes that the commenter's reference to 13.6 percent is likely based on data in the analysis that excludes fishmeal in the calculation of average sector harvest share (see Table 3–11 in the EA/RIR/FRFA). The Council and NMFS included fishmeal in determining historic harvest. When fishmeal is included in the calculation, the head-and-gut (non-AFA trawl CP) sector average historic harvest from 1995 to 2003 is 13.4 percent. The non-AFA trawl CP sector received exactly its 1995 to 2003 average historic harvest as its allocation under Amendment 85. The Council and NMFS also considered more recent participation in 2004 and 2005, but for reasons provided in the response to Comment 3, chose not to include more recent participation in determining historic use and dependence.

Comment 7: The draft analysis should be revised to include at least one table (based on official catch data and including fish utilized in meal production) that clearly shows the total retained catch of cod by the AFA trawl CP sector during the period following adoption of the AFA (e.g., the years 1999–2003).

Response: Appendix G of the analysis prepared for Amendment 85 and this rulemaking (see **ADDRESSES**) includes Pacific cod catch data, including fishmeal, for the AFA trawl CP sector for the years 1995 through 2003. Therefore, NMFS does not need to revise the analysis to include this table.

Comment 8: Neither the EA/RIR/IRFA before the Council nor the Secretarial draft had simply one table which showed the complete picture of each sectors' history. It takes three tables to complete the 1995–2005 picture.

Response: Table 3–24 in the Secretarial review draft of the EA/RIR/IRFA gives the data for BSAI Pacific cod non-CDQ allocations, catch and reallocations by sector from 1995 through 2005. The proposed rule purposely used two tables and the Secretarial review draft analysis used three to present the historical catch data as the average share of the retained Pacific cod harvest over various time periods. Table 3–9 in the EA/RIR/IRFA was used to show the complete picture of each sector's history for the years under consideration for allocations (1995 - 2003), and Table 3–12 shows the catch history for 2004 and 2005 in a two-part table. The data from 1995 through 2003 used in Table 3 in the proposed rule were from a different source than the data for 2004 and 2005 used in Table 4. Separate tables were used to help draw attention to this fact in the proposed rule and for the same reason in the EA/RIR/FRFA.

Comment 9: The proposed allocation to the H&G sector cannot be justified by the fact that the H&G sector had a lower harvest share in 1995–1998, nine to twelve years ago and prior to the implementation of several significant regulatory changes culminating in the AFA that fundamentally changed the dynamics of the fishery, and that as a result its ''average historical'' retained catch was 13.4 percent. The sector's performance in those earlier years is of no relevance to the goal that the Council was seeking to achieve.

Response: NMFS disagrees. The reasons why data from 1995 through 1998 are included in the calculation of average historic harvest are explained in the response to Comment 3. While the data may represent a period of time when the non-AFA trawl CP sector was not maximizing its retained harvest of Pacific cod, it does represent a period of time when other sectors were maximizing their harvest. The Council's goal was to adjust allocations ''to better reflect historic use by sector.'' NMFS determined that the years selected by the Council are consistent with that goal.

Comment 10: The Council was not required to use one particular set of ''correct'' years in conforming the allocations to existing reality, but the allocation to the non-AFA trawl CP sector was clearly beyond any rational assessment of ''actual use.'' Within the range of options presented to the Council in the Amendment 85 document (April draft), the period from 2000 to 2003 clearly was most reflective of actual current participation in the fishery. Under that approach, the non-AFA trawl CP sector averaged 16.2 percent. At the other extreme, under the option least reflective of actual current participation, from 1995 to 2002, the non-AFA trawl CP sector average 13.2 percent. Incredibly, the Council chose to allocate an even smaller share to the non-AFA trawl CP sector than the 1995–2003 average of 13.6 percent. The Council's proposal of 13.4 percent does not reflect the non-AFA trawl CP sector's current or even its relevant recent participation in this fishery. This reduction was not part of an across-the-board cut that treated all sectors equitably. Some sectors received an increase above their actual use and the non-AFA trawl CP sector received the largest decrease.

Response: See the response to Comment 3 for a discussion of the years considered to determine average historic harvest. The non-AFA trawl CP sector catch history from 1995 through 2003 is 13.6 percent only if fishmeal is not included. However, the Council's allocation recommendation included Pacific cod that was turned into fishmeal as the primary product when

developing the Pacific cod sector allocations because Pacific cod destined for fishmeal production is legally retained catch (see response to Comment 2). Table 3–119 of the EA/RIR/FRFA shows that when fishmeal is included in the calculation, which the Council did in taking final action, the non-AFA trawl CP sector's average from 1995 through 2003 matches exactly the new allocation: 13.4 percent of the non-CDQ Pacific cod TAC. Some sectors received allocations that are greater than their historic harvest during 1995 through 2003 and others less, but the non-AFA trawl CP sector was the only sector to receive exactly its average share of the retained harvest from 1995 through 2003.

Comment 11: Comparing the harvest information from 2004 and 2005 with the Amendment 85 allocations reveals that the non-AFA trawl CP sector suffered nearly an order of magnitude loss greater than any other sector (most of which received allocations at or above their 2004–2005 average). Comparing the Amendment 85 allocation to the average of 1998–2003 (a range from when cod became a 100–percent retention species to the last year of data the Council had when making their decision), the non-AFA trawl CP fleet still lost far more than any other sector going from an average of 15.7 percent to 13.4 percent (relative loss of 14.5 percent).

Response: The Council had harvest data from 2004 and 2005 available when it took final action on Amendment 85. It was not available in the same format as the years from 1995 through 2003, but it was considered by the Council. The non-AFA trawl CP sector allocation is exactly its catch history from 1995 through 2003. As stated previously (see responses to Comments 2 and 3), the Council chose to look at history and dependency over a number of years, not just one or two recent years. Although the non-AFA trawl CP sector's retention of Pacific cod has increased over the last several years, that sector always had the opportunity to retain Pacific cod in higher amounts than they historically did. For various reasons, the sector chose to focus on other species as a business decision. The Council determined that the new allocations were needed to better reflect historic use and chose not to define historic use as just the last two or three years.

Comments on Allocation Issues

Comment 12: The increase in allocation percentage to fixed gear from trawl gear is consistent with the historic trend in the way the BSAI cod fishery is prosecuted as well as with previous Council actions regarding BSAI cod allocations in Amendments 24 and 46. Stabilizing the increased historic proportion of fixed gear harvest via allocation of BSAI Pacific cod in Amendment 85 will ensure the continued experience of reduced halibut and crab bycatch, improved product quality, and reduced benthic impacts associated with fixed gear cod fisheries as compared to trawl cod fisheries.

Response: Amendment 85 is intended to better reflect historic usage by the various harvest sectors while addressing coastal community needs. The Pacific cod allocations to the trawl and fixed gear sectors set in 1994 under Amendment 24 (54 percent and 44 percent, respectively), were approximately equal to the average percentage of Pacific cod taken with these gear types during 1991 through 1993, with a 2–percent allocation for jig gear. The Pacific cod allocations set in 1996 under Amendment 46 were arrived at by industry negotiation and were chosen to represent more closely the harvest percentage taken by trawl and fixed gear sectors at that time (47 percent and 51 percent, respectively), while maintaining the 2–percent allocation for jig gear. Under Amendment 85, if the harvest sectors were similarly grouped, the allocations would be 37.8 percent for trawl gear, 60.8 percent for fixed gear, and 1.4 percent for jig gear. NMFS has determined that the sector allocations proposed under Amendment 85 better reflect the historic use by the various harvest sectors as a whole than do the current sector allocations, and has approved them. NMFS notes the second comment.

Comment 13: All sectors received amounts that reflect recent participation, except the AFA CPs which received more, and the small boat fleets which also received much more than their history, as a policy decision. Only the H&G fleet has suffered a set back so large that both its directed fishery and its non-cod directed fisheries are jeopardized, while the other sectors' annual fish plans were not affected.

Response: NMFS approved the non-CDQ sector allocation percentages in Amendment 85. The following is NMFS' rationale for that decision. Amendment 85 will separate trawl CPs into two sectors, AFA and non-AFA, for purposes of Pacific cod allocations. The AFA trawl CP fleet will be restricted to a separate allocation slightly greater than its historic catch from 1995 through 2003, but 62.3 percent below its current sideboard limit for catch of Pacific cod. Separating the two sectors will protect the historic catch of the non-AFA trawl CPs better than leaving these two sectors combined with a lower shared allocation that reflects their combined history, but with the same AFA sideboard limit. Although the AFA trawl CP sector decreased its average harvest share between 2000 and 2003, this fleet is a cooperative that more likely will catch its Pacific cod allocation in a manner that minimizes the bycatch of non-target species. Bycatch is a consideration under National Standards 4, 5, and 9 of the Magnuson-Stevens Act. Because the allocation to the AFA trawl CP sector is slightly higher than this sector's historic catch, it should be sufficient for this sector to cooperatively manage its allocation and maintain a directed fishery, in addition to meeting its needs for incidental catch in its pollock and yellowfin sole fisheries. This ability to maintain the opportunity for these few directed fisheries is important because AFA sideboard provisions restrict this sector's ability to participate in other BSAI fisheries and AFA trawl CPs are prohibited from fishing in the Gulf of Alaska.

Only the non-AFA trawl CP sector will receive an allocation equal to its exact average historic harvest share from 1995 through 2003. The allocation to this sector is reflective of its dependence on the Pacific cod fishery over many years. About half of its historic Pacific cod harvest occurs as incidental catch in flatfish (primarily yellowfin sole and rock sole), Atka mackerel, and rockfish fisheries. The BSAI flatfish fisheries are the primary revenue source for this sector and often incur high incidental catches of Pacific cod. Note that the trawl CP sectors combined have contributed 49.1 percent on average to the total annual reallocations of Pacific cod to other non-trawl sectors between 2000 and 2004. Based on environmental considerations, the nature of these sectors' fisheries, average historic harvest, and to protect the non-AFA trawl CP harvest, NMFS determined that the allocations under Amendment 85 to the trawl CP sectors are a reasonable balance of the National Standards under the Magnuson Act.

The hook-and-line CV ≥60 ft (18.3 m) LOA sector will receive an allocation above its average historic harvest, and this allocation will no longer be shared with the hook-and-line CV <60 ft (18.3 m) LOA sector. This will allow Pacific cod to remain open to directed fishing for a longer period of time. Existing regulations governing bycatch require that all Pacific cod be retained when directed fishing is open. Thus, discard of Pacific cod by the hook-and-line CV

≥60 ft (18.3 m) LOA sector should be reduced when targeting other species, particularly Pacific halibut, and to a lesser extent in its sablefish and rockfish fisheries, an important consideration under National Standards 4, 5, and 9.

The allocations are not based solely on historic harvest share, but also are based on socioeconomic considerations, consistent with National Standard 8. For this reason, the allocations are higher than the average historic harvest for the jig sector and the fixed gear CV <60 ft (18.3 m) LOA sector. Under National Standard 8, NMFS must take into account the importance of fishery resources to fishing communities to provide for the sustained participation of such communities. By maintaining allocations above the average harvest history for these two entry level sectors, Amendment 85 maintains and expands local opportunities for resident fishermen in small, coastal communities near the fishing grounds to participate in the BSAI Pacific cod fishery.

The increase in the allocation to the fixed gear CV <60 ft (18.3 m) LOA sector from 0.7 to 2.0 percent of the non-CDQ Pacific cod TAC is fair and equitable. This sector has been successfully harvesting part of the allocation to the general hook-and line CV and pot CV allocations, all of its allocation since 2002, and reallocations from the jig sector since 2004. Its share of the harvest in 2004 and 2005 averaged 1.7 percent. The small CV sectors have been favored in previous allocation measures for BSAI Pacific cod to encourage growth in this entry level sector. Such actions have been successful as illustrated by the steadily increasing harvests by this small boat sector. The allocation of 2.0 percent to the fixed gear CV <60 ft (18.3 m) LOA sector is necessary to provide sufficient Pacific cod for this sector to harvest under its own direct allocation, separate from the hook-and-line and pot CV ≥60 ft (18.3 m) LOA sector allocations these small boats currently may fish under, and to allow continued growth in this small boat sector.

Although the jig sector allocation of 1.4 percent of the Pacific cod TAC is 14 times higher than its historic harvest share, it is a reduction from it current allocation of 2.0 percent. The intent of this allocation is to provide for an entry level fishery. The reduced allocation to the jig sector still allows for growth in this sector and is closer to its historic harvest share than its current allocation. Additionally, this allocation serves as a ''bank'' for anticipated growth in the harvest of Pacific cod in all catcher vessel sectors given that unused portions of the jig gear allocation are annually reallocated first to the fixed gear <60 ft (18.3 m) LOA sector (another small boat, entry-level sector), and then to other CV fleets that deliver to fishing communities. Also, under Amendment 85, reallocations from the jig sector will be available to the fixed gear <60 ft (18.3 m) LOA sector earlier in the year. Being able to harvest the fish earlier in the year when the weather is preferable for these small boats (safety is a consideration under National Standard 10), should enable this sector to harvest more of the reallocated fish than it does currently. Therefore, in light of the likelihood of reallocations of any unused allocations to the <60 ft (18.3 m) LOA fixed gear sector, and to other CV fleets that deliver shoreside to fishing communities, the allocation of 1.4 percent of the Pacific cod TAC to the jig sector is fair and equitable and meets the purpose and need of the action to consider socio-economic and community factors.

For the small boat sectors to receive allocations above their average historic harvest, some sectors must receive less than their average historic harvest. The four sectors that will receive lower allocations than their average historic harvests are the pot CV ≥60 ft (18.3 m) LOA, hook-and-line CP, pot CP, and trawl CV sectors. Their allocations represent a reasonable balancing of Magnuson-Stevens Act National Standard requirements while also meeting the purpose and need of the action. The pot CV ≥60 ft (18.3 m) LOA sector and the hook-and-line CP sector will receive allocations that are closer to their average historic harvests than are their current allocations and are only slightly less than their average historic harvests. Because the small boat sectors will receive allocations above their historic harvest it is expected that the pot CV ≥60 ft (18.3 m) LOA sector and the hook-and-line CP sector also may receive reallocations toward the end of the fishing year, which will make their share of the TAC closer to their historic share of the harvest. Additionally, the pot CV ≥60 ft (18.3 m) LOA and trawl CV sectors may receive reallocations of Pacific cod from other CVs or from CPs of the same gear type. Also, the pot sectors are primarily dependent on crab fisheries rather than on the Pacific cod fishery. The pot CP and trawl CV sectors are the only sectors, other than the fixed gear <60 ft (18.3 m) LOA sector, that will receive allocations that are less reflective of their average historic harvests between 1995 and 2003. Recent trends demonstrate that the pot CP and the trawl CV sectors' harvest shares have decreased in recent years, such that the allocations under Amendment 85 better reflect these sectors' average harvest shares between 2000 and 2003 than do the current allocations. The AFA trawl CP sector was the only other sector that decreased its average harvest share between 2000 and 2003, but was not selected to fund the increases in other sector allocations for the reasons stated above. The allocation to the pot CP sector is fair and equitable because of its more recent decreased harvest share and its greater dependence on the crab fisheries. Although the trawl CV sector allocation is reduced, a combined allocation of Pacific cod to the AFA and non-AFA trawl CVs will take advantage of the existing AFA inshore cooperative structure for discussion and agreement concerning access to fishing grounds and harvesting activities in a manner that optimizes the allocation to this sector for all CVs. Additionally, public testimony at the April 2006 Council meeting requested that the two trawl CV sectors remain combined. A combined allocation also is larger than separate allocations to either the non-AFA or AFA CVs, thus providing some protection in the event that trawl vessels that have not historically participated in the fishery choose to do so.

Comment 14: The AFA trawl sectors would receive the largest aggregate increased share of the Pacific cod fishery under the Council proposal – 1.2 percent over the combined AFA trawl CP and trawl CV history from 1999 through 2005.

Response: The data presented in the analysis include historic harvest from 1995 through 2003 as the primary basis for determining historic use of Pacific cod by sector, although data from 2004 to 2005 are presented as well. The Council did not make its proposal based on catch history from 1999 through 2005 based on reasons given in response to Comment 3. The trawl CV and AFA trawl CP sectors do not receive a combined allocation. The AFA trawl CP sector will receive a share of the non-CDQ Pacific cod TAC that is 0.1 percent higher than its historic share from 1995 through 2003. The AFA trawl CV sector will receive an allocation in combination with the non-AFA CV sector. That allocation will be 1.9 percent less than its historic share from 1995 through 2003. Combining the AFA trawl CP sector with the trawl CV sector results in a combined decreased share of 1.8 percent of the non-CDQ Pacific cod TAC.

Comment 15: The proposed allocation of 13.4 percent to the non-AFA trawl CP sector is significantly less than this sector's actual dependence and use. The allocation scheme proposed by

Amendment 85 will put the H&G sector in an economically precarious position, slashing its recent usage of cod by up to 30 percent based on its harvest in 2004. The APA requires agency actions, such as Amendment 85, to bear a rational relationship to the problems they are intended to address. Reducing the non-AFA trawl CP's allocation so substantially below its actual harvest levels over the past seven years does not serve the Council's ''primary objective'' of reducing the need for annual reallocations. The Notice of Proposed Rulemaking relies upon figures that clearly demonstrate this point. The Notice of Proposed Rulemaking specifically points out that the non-AFA trawl CP sector's retained harvest ''has not been less than 15.3 percent since 2000.'' There is no rational basis in the record to justify the reduction in cod TAC suffered by the H&G sector in this Council recommendation.

Response: The allocations were based on long-term dependence and catch history over many years. The harvest history was not based on just one or two years of harvest by a particular sector (see responses to Comments 3 and 13). The Council had the option to select from six sets of specific years or to select percentages for the Pacific cod allocations that fall within the range of percentages analyzed. The Council chose the latter course of action. Thus, as the information was presented in the analysis, the focus was on Pacific cod harvest history from the years 1995 through 2003. NMFS recognizes that the selection of certain year sets will be more beneficial to some sectors than the selection of other year sets. In setting the percentages, the Council made a reasonable balance of the National Standards under the Magnuson-Stevens Act, particularly National Standards 4 and 8 which deal with allocations and community considerations respectively. In examining the Council's action, NMFS determined that the allocations reasonably reflect the historic harvest of Pacific cod by each sector between 1995 and 2003. NMFS determined that consideration of the earlier years (1995 through 1998) is reasonable and that calculating harvest history through 2003, rather than 2004 or 2005, is reasonable for the reasons given in response to Comment 3.

As stated in the proposed rule, the primary objective of the Council was to reduce the level and frequency of annual reallocations, and thus enhance stability so each sector may better plan its fishing year and operate more efficiently. Annual reallocations are expected to be reduced under Amendment 85, and are thus related to the revised allocations to each sector that more closely reflect historic use by most sectors than do current allocations, while considering socioeconomic and community factors. As noted in the response to Comment 13, nearly half of the annual reallocations between 2000 and 2004 have come from the trawl CP sectors and those reallocations averaged 19.4 percent of the initial trawl CP sector allocation.

Comment 16: National Standard 4 provides that ''If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be...fair and equitable to all such fishermen...'' Elaboration of this requirement under § 600.325(c)(3)(i)(A) requires that the particular allocation chosen be ''rationally connected to the achievement of OY [optimum yield] or the furtherance of a legitimate FMP objective...'' and that ''the motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause.'' In this case, the objective to conform allocations to current usage (to reduce late-year reallocations of unharvested fish) and dependency cannot be rationally served by reducing the non-AFA trawl CP sector allocation to one-quarter to one-fifth below its actual recent harvest levels or by allocating more than recent harvest levels to other sectors. Under National Standard 4, an allocation may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. The Council would have had to make an estimate of the benefits and hardships imposed by the allocation and compare them to those of alternative allocation schemes, including the status quo. The Council did not do that.

Response: NMFS has determined that the allocations are fair and equitable to all sectors. Between the two quotes from the Code of Federal Regulations is the sentence ''Inherent in an allocation is the advantaging of one group to the detriment of another.'' This action also is designed to increase the Pacific cod allocation to the small boat sectors which is a legitimate FMP objective. The management objectives in the FMP include promoting sustainable fisheries and communities. Because the small boat sectors deliver to fishing communities, increasing allocations to these sectors should promote these fishing communities. This action also will decrease the amount of Pacific cod that is reallocated to other sectors later in the season, facilitating these sectors' ability to achieve optimum yield by better planning their fishing year and operating more efficiently. The response to Comment 3 provides NMFS' rationale for why the years 1995 through 2003 are a reasonable, fair, and equitable set of years for determining the average historic share of the retained Pacific cod harvest. Using that set of years, the non-AFA trawl CP sector received a fair and equitable allocation which is exactly its average historic harvest share from 1995 through 2003. Please see the response to Comment 13 for a discussion of all sectors' allocations.

Comment 17: Every sector was allocated its target and incidental cod needs, except the H&G sector. This discrepancy is not specifically highlighted in the draft Secretarial Review. The H&G fleet was allocated an insufficient amount for accommodating both a directed fishery and incidental catch needs and, by inference, was given a choice: target or bycatch, but not both. This violates National Standard 4, that allocations be fair and equitable to all fishermen. When one sector must decide between its target fishery and its other groundfish fisheries, while others have been allocated in excess of or close to their recent harvests, it is neither fair nor equitable, particularly in light of the fact that it was never addressed in the EA/RIR/IRFA.

In economic terms, NMFS' inseason manager estimates that under Amendment 85, the H&G sector would lose about 10,000 metric tons of cod in 2007 compared to expected harvest under the status quo. NMFS' in-season manager also estimates that in order to account for the incidental catch needs of the fleet for its flatfish and other fisheries, the agency will only be able to allow for a directed fishery of 10 or 11 days, whereas currently, the directed cod fishery is seldom closed. Owners, employees, observer providers, support companies, and the ports the vessels call on may suffer economic hardship under Amendment 85. We respectfully request that the Secretary disapprove the allocations.

Response: NMFS has approved the non-CDQ allocations of Pacific cod under Amendment 85. Every sector, except the small boat sector, was allocated an amount of Pacific cod that reflects its average historic harvest and dependence over many years that included target and incidental catch to the extent that incidental catch was retained. Information on the historic harvest share for the non-AFA trawl CP sector was provided in the EA/RIR/FRFA, just as it was for all the other sectors. The non-AFA trawl CP sector's allocation of 13.4 percent of the Pacific cod non-CDQ TAC is 100 percent of its average historic harvest between 1995

and 2003, an exact reflection of its historic use and reflective of this sector's dependence on the resource over many years. Its recent increase in directed fishing for Pacific cod does not reflect a long-term dependence on the fishery. NMFS acknowledges that accommodating target and incidental catch may be more difficult for the non-AFA trawl CP sector when compared to its most recent few years' harvest.

The economic impacts of Amendment 85 were analyzed in the RIR and IRFA. Because this action is principally designed to reapportion access to the Pacific cod resource among current user groups, it represents tradeoffs (i.e., some entities are negatively affected while others are positively affected). The estimates referred to by the commenter were provided by NMFS a few weeks after the April 2006 Council meeting as a worst case scenario using lower acceptable biological catch (ABC) and TAC levels than actually were established for 2007 and assuming that the non-AFA trawl CP sector would continue conducting its fisheries as it does currently. Revising the estimates for 2007 based on the actual TAC and with a CDQ allocation of 10.7 percent would yield an estimate of 19 to 20 days of directed fishing under current non-AFA trawl CP fishing practices. If incidental catch rates of Pacific cod in other groundfish fisheries are reduced below the current rates, the non-AFA trawl CP sector should be able to maintain a directed fishery for Pacific cod for an even longer period of time. As stated in the EA/RIR/FRFA on pages 294 and 295: ''With a lower potential allocation compared to recent years, this sector will likely need to determine how much of its cod allocation will be used as incidental catch to other target fisheries versus to fund the directed cod fishery,'' and ''Absent a cooperative structure as approved [by the Council] in [proposed] Amendment 80, it is expected that compliance with the groundfish retention standards and management of a lower Pacific cod allocation to serve both directed and incidental catch needs, will be substantially more difficult.'' See response to Comment 16 regarding consistency of Amendment 85 and this final rule with National Standard 4.

Comment 18: The loss of a directed cod fishery leaves the H&G fleet with no fishery from the end of the yellowfin sole fishery (which ended in mid-April of 2006) until July, when the ''B'' season starts. No other fleet will see its current operations disrupted by Amendment 85 the way that the H&G sector will.

Response: Under existing regulations, Pacific cod allocations are further apportioned by season for most gear sectors to protect prey availability for Steller sea lions. Currently, the trawl CPs, AFA and non-AFA combined, receive 50 percent of their allocation in the A season, 30 percent in the B season, and 20 percent in the C season. See the proposed rule for more details on seasonal allowances. Beginning in 2004, the trawl CP sector Pacific cod fishery has closed in mid-March due to reaching it's a season allowance. The B season for trawl CPs opens on April 1 and closes on June 10. More than half the incidental catch of Pacific cod by trawl CPs occurs after March. Amendment 85 changed the seasonal allowances for the trawl CP sectors so that 75 percent of the allocation may be harvested in the A season, with the remaining 25 percent harvested in the B season. This was done to maintain to the extent possible the current percentage of non-CDQ Pacific cod TAC available for harvest in the early part of the year when fishing for Pacific cod is more advantageous. If incidental catch rates of Pacific cod in other fisheries are kept low, the non-AFA trawl CP sector should be able to maintain a directed fishery for Pacific cod.

Comment 19: The AFA trawl CP sector was funded with more than their recent (99–05) usage of 1.9 percent. That sector has its pollock fishery cod bycatch needs met at the all time high 1.5 million mt pollock TAC level, even as the pollock biomass and TAC are on a downward trend. With a 2.3–percent allocation, and lower pollock TAC, more cod can be used to enhance their directed fishery, which is essentially an IFQ [individual fishing quota] since only one vessel is used in the fleet to directed fish on cod. That vessel is also an AFA eligible CP, and while on the record it was stated that it has nowhere to go other than cod, the vessel has access to the yellowfin sole sideboard and the directed pollock fishery of the AFA CPs. It is the vessel owner's decision not to fish pollock or yellowfin sole with that vessel.

Response: The AFA trawl CP sector will receive an allocation that is 0.1 percent above its average historic share of 2.2 percent of the Pacific cod harvest. NMFS provided the agency's explanation for approving the AFA trawl CP Pacific cod allocation in the response to Comment 13. NMFS agrees that it is each vessel owner's decision whether or not to harvest fish in the fisheries open to that particular vessel. However, it is a goal of this amendment to allocate Pacific cod to specific sectors based on average historic harvest, not to determine what fisheries are open to specific vessels or to establish other vessel-specific provisions for access to Pacific cod or other groundfish. Also, the AFA trawl CP sector allocation is less than its current sideboard limit for harvesting Pacific cod (see response to Comment 13).

Comment 20: The reduced ability to target Pacific cod during the A season for the CP trawl sector has resulted in more rollovers to fixed gear; the cod that would have been caught in March when the fish are most aggregated, has not been caught. The fishery in the last two years has closed in early-mid March due to the 50 percent season limit and reduced cod TACs. This has benefitted the fixed gear sector which gets the rollover in the C season, at the end of the year. The Steller sea lion management measures drastically altered cod fishing patterns and harvests. The patterns were altered because of the seasonal apportionments, not because of changed priorities or reduced dependency on the part of the harvesters.

Response: Almost all gear types, excluding <60 ft (18.3 m) LOA fixed gear, are restricted in their amount of Pacific cod catch in the first half of the year because of SSL protection measures, not just the trawl CP sector. A goal of Amendment 85 is to reduce the amount of reallocations due to unharvested Pacific cod left toward the end of the fishing year. The trawl CP sectors have not harvested their entire allocation in any year since that sector began receiving a separate Pacific cod allocation in 1997. The jig sector is the only other sector that has also had Pacific cod reallocated from it in every year it has received a Pacific cod allocation. Beginning in 2004, NMFS has closed the trawl CP sector Pacific cod fishery in mid-March due to reaching its ''A'' season allowance. The B season opens on April 1 and closes on June 10. In 2005, NMFS closed the trawl CP sector Pacific cod directed fishery on August 18 because it had reached its halibut PSC mortality limit. In 2006, NMFS closed the trawl CP sector Pacific cod directed fishery on June 8 (just before the end of the B season), opened it on July 19, and closed it on August 31 due to halibut PSC mortality considerations. So in the last two years, the trawl CP sector Pacific cod directed fishery has been closed during the C season due to reaching its halibut PSC mortality limit. Halibut PSC mortality limits and seasonal allowances to protect SSLs have affected most sectors to varying degrees. It is up to each sector to try to keep its Pacific cod incidental catch rates and PSC catch rates low if it wants to maintain a directed fishery for Pacific cod. Also note that the seasonal

allowance percentages have changed under Amendment 85 (see response to Comment 22).

Comment 21: The State waters Pacific cod fishery has taken 3 percent of the Pacific cod ABC for the past two years, to fund a fishery in Adak which is closed to trawl CPs over 100 ft. This reduces the BSAI Pacific cod TAC by 3 percent. While this is calculated by NMFS to be taken ''off the top,'' if one looks at the allocations to each sector, it can be argued that it's really the H&G sector that took the hit. The H&G sector's 2004–2005 harvest (Table 3–12 - retained, incl. meal) was 17.7 percent. The H&G allocation is 13.4 percent. The cumulative effect of the increased CDQ and State waters fishery, is a further reduction in TAC of 6.2 percent. The original ITAC was 92.5 percent of TAC, now it will be 86.3 percent of TAC. This reduction is spread disproportionately among sectors.

Response: NMFS disagrees. The Council is free to choose how much of the Federal Pacific cod TAC it allocates to small vessels regardless of the existence of a State of Alaska-managed Pacific cod fishery in State waters. The State waters Pacific cod fishery is not within the Council's or NMFS' jurisdiction and can be modified by the State at any time. The amount of Pacific cod set aside for the State waters fishery has not and will not come from the non-AFA trawl CP sector allocation alone. Additionally, all trawl CPs ≤100 ft (≤ 30.5 m) do not have access to the State waters Pacific cod fishery, not just the non-AFA trawl CPs.

The process followed by NMFS in setting the allocations for Pacific cod each year in the annual specifications process is to first deduct the amount of Pacific cod for the State waters fishery from the ABC. The remainder is the TAC for a particular year. NMFS then deducts the amount of Pacific cod allocated to the CDQ Program. Finally, the remaining non-CDQ TAC is divided among the sectors. The reductions are taken before allocations are made to the non-CDQ sectors and, thus, affect all sectors proportionately.

Comment 22: The EA/RIR/IRFA analyzed the impact of reallocating cod from trawl to fixed gear and determined that the trawl CP sector would have no C season cod, unless it rolled from within the sector's B season. Even with no cod TAC reductions, the trawl CPs will be severely constrained with the 50 percent limit for the A season, and this will filter through to the end of the year. The other trawl and fixed gear fleets that were well funded are in no worse position than they were prior to the Amendment 85 action.

Response: The Council directed that allocations for the A and B seasons for trawl gear and the A season for fixed gear sectors be calculated to maintain the current seasonal percentage of the non-CDQ TAC that is allocated to those sectors. This was done to allow directed fishing for Pacific cod earlier in the year when there is less PSC bycatch, Pacific cod harvest rates are highest, and to maintain SSL protection measures. Under this action, the A season allowance for the non-CDQ trawl CP sectors will increase from 50 percent to 75, with the remaining 25 percent seasonal allowance available in the B season. That is why there would be a C season harvest only if seasonal allowances roll over from the A or B seasons to the C season.

Comment 23: The non-AFA trawl CP fleet makes important economic contributions to remote Alaskan communities that the Council's reduced allocation to that sector may well jeopardize. The non-AFA trawl CP fleet fishes year round, using support services and relying on vendors which would normally be closed in the late spring/summer months were it not for this fleet's activities. The State of Alaska assesses all fish landed in Alaska, regardless of gear or sector designation. Whether harvested by CVs or CPs, the same landing taxes would be generated, and given back to the communities in which the fish would be offloaded. Any suggestion that community impacts support imposing the burden of funding the increased small-boat allocations solely (or even primarily) upon the non-AFA CP fleet is not based in fact or supported by the record.

Response: NMFS acknowledges that the non-AFA trawl CP fleet makes economic contributions to the communities visited by vessels in that sector. Based on the EA/RIR/FRFA, NMFS does not expect a significant impact on remote Alaskan communities due to the non-AFA trawl CP allocation under Amendment 85. Any potential negative effects on remote Alaskan communities are likely to be outweighed by the positive impacts of the increased allocations to the small boat sectors, which are based primarily out of Alaskan communities. See response to Comment 13 regarding the ''funding'' of the allocations to the small boat sectors.

Comment 24: A separate section of the Magnuson-Stevens Act, 16 U.S.C. 1853(b)(6) requires the Council and the Secretary to consider a certain set of relevant factors as a condition to establishing a limited access system for a fishery.

Response: NMFS agrees that section 303(b)(6) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)(6)) requires the Council and NMFS to take into account several factors when establishing a limited access system. However, Amendment 85 does not establish a limited access system for the Pacific cod fishery because it does not affect existing participation requirements for the BSAI Pacific cod fishery. Therefore, section 303(b)(6) is not applicable to Amendment 85.

Comment 25: NMFS should approve Amendment 85 with a Pacific cod allocation for the AFA trawl CP sector significantly greater than the 2.3 percent proposed by the Council. Appropriately calculated, the retained legal catch of the AFA trawl CP sector averaged approximately 2.5 percent of the total retained legal catch of BSAI cod between 1999 and 2003, the relevant years following passage of the AFA in 1998. The 2.3–percent allocation recommended by the Council and contained in the proposed amendment represents the absolute minimum amount necessary to fund both the bycatch needs of the AFA trawl CP pollock fishery and the relatively small directed fishery that at least one of the AFA trawl CP vessels has been conducting in the BSAI for many years. Ultimately, the way the incidental catch allowance is established and managed will determine the extent to which these objectives can be accomplished.

Response: The AFA trawl CP sector will receive an allocation that is slightly higher than its average historic harvest from 1995 to 2003, one of only two non-small boat sectors to do so. About 44 percent of the Pacific cod harvested by the AFA trawl CP sector during that time period was taken incidentally when these vessels were targeting BSAI pollock. See the response to Comment 3 for why these years of historical harvest are appropriate. The allocation to the AFA trawl CP sector should be sufficient for this sector to cooperatively manage its allocation and maintain a directed fishery in addition to meeting its incidental catch needs in other fisheries. The incidental catch allowance for the AFA trawl CPs will be established inseason with the intent of maintaining a directed Pacific cod fishery.

Comment 26: We support the proposed rule's plan to manage each of the trawl sector incidental catch allowances on an inseason basis. The proposed amendment should be revised to direct NMFS to manage any incidental catch allowance established in connection with the AFA trawl CP sector's Pacific cod allocation to

facilitate, to the maximum extent practicable, the prosecution of an early season directed Pacific cod fishery without jeopardizing the need to retain sufficient Pacific cod for bycatch in the directed pollock fishery later in the year.

Response: NMFS notes the support for establishing trawl sector incidental catch allowances on an inseason basis. NMFS' existing policy for establishing incidental catch allowances is to facilitate, to the extent practicable, directed fisheries while retaining amounts needed as incidental catch in other directed fisheries. NMFS does not need regulatory authority to continue this policy, so no regulatory changes are necessary.

Comment 27: Tables 3 and 8 of the proposed rule are inaccurate and understate the legally retained BSAI Pacific cod catch history of the AFA trawl CP sector. Table 3 does not use the ''best available data'' to calculate the AFA trawl CP sector's catch history for the years after 1998. In Table 8, the range for the AFA trawl CP sector includes a lower end point of 0.9 percent. That number is misleading for several reasons: first, it is derived by excluding fish utilized in the production of meal; and second, it is generated by using a WPR approach to calculate retained catch. This is inaccurate and prejudicial in that it suggests a level of usage and dependency that is significantly lower than accurately calculated catch would indicate.

Response: Regarding Table 3 in the proposed rule, the response to Comment 2 explains why WPR data were used instead of observer data to calculate catch history. The purpose of including Table 8 was to demonstrate the wide range of allocations that were considered by the Council. The allocation to the AFA trawl CP sector is slightly above its catch history as calculated from WPR data from 1995 through 2003. Also see responses to Comments 13 and 25.

Comment 28: We prefer to purchase all of the Pacific cod for our restaurant chain from a particular AFA trawl CP because of the high quality of the product. If the amount of Pacific cod available for that vessel to harvest were to decline, we would likely be forced to purchase lower quality processed cod from foreign commodity markets.

Response: Under Amendment 85 and this final rule, the AFA trawl CP sector will receive an allocation of Pacific cod that is slightly above its historic harvest. Because the AFA trawl CP sector operates as a cooperative and has the ability to control its harvest, NMFS anticipates that the amount of Pacific cod allocated to the AFA trawl CP sector will be sufficient to maintain the sector's directed fishery while meeting its incidental catch needs in other fisheries.

Comments on Dependency on the Pacific Cod Fishery

Comment 29: The non-AFA trawl CP sector asserted that the Pacific cod allocation they received will be insufficient to prosecute their flatfish fisheries. However, that does not appear to be the case. From 1999 to 2003, the non-AFA trawl CP sector took 54 percent of their Pacific cod in directed Pacific cod fishing and 46 percent incidentally while targeting other species (flatfish, etc.). In 2003, 63 percent of the non-AFA trawl CP sector Pacific cod was taken in directed Pacific cod fishing and 37 percent was taken incidentally. The allocation the non-AFA trawl CP sector received is 90 percent of its 1997 to 2003 average catch history. For comparison, the pot CP sector received an allocation that is 88 percent of its 1997 to 2003 catch history. The trawl CV sector allocation was 97 percent of its 1997 to 2003 catch history. The hook-and-line CP sector received an allocation that is 97 percent of its 1997 to 2003 catch history. However the hook-and-line CP sector's dependency on BSAI Pacific cod is four times that of the non-AFA trawl CP sector and more than twice that of the pot CP sector and the trawl CV sector.

Response: Please see the EA/RIR/FRFA for the best available data on the BSAI Pacific cod fishery. All the sectors are dependent on the BSAI Pacific cod resource, albeit to varying degrees. Based on the average annual estimated total first wholesale revenue from groundfish products between 1999 and 2003, the hook-and-line CP sector is more dependent than the other sectors on the BSAI Pacific cod resource.

Comment 30: The proposed allocations do not correlate with actual dependency and use by sector. The non-AFA trawl CP sector is highly dependent on Pacific cod as a directed fishery and as an incidentally caught species in every target fishery the sector prosecutes. The H&G fleet will lose most of its directed cod fishery under the Amendment 85 allocation because almost half of the cod harvested by the H&G fleet is incidental cod in other groundfish fisheries. This fishery now represents over a quarter of all non-AFA trawl CP sector revenues. This aggregate figure, as large as it is, masks the fact that Pacific cod accounts for well over half of the revenues for particular non-AFA trawl CP vessels, particularly the smaller vessels in the fleet. If the Amendment 85 allocation and CDQ increases took place in 2007, and assuming a harvest equal to that of 2005, the fleet would shut down in late May due to insufficient cod. The sector would lose 34 percent of its annual 1999 to 2004 average revenues for the fleet.

Response: NMFS acknowledges that the non-AFA trawl CP sector Pacific cod allocation under Amendment 85 is less than the percentage harvested by the sector in very recent years and that this sector's harvest has increased in recent years. However, the allocation is not based on one or two recent years, but is reflective of long-term dependence as evidenced by harvest over a longer period of time. The Council decided that long-term dependence was appropriate and NMFS determined that the record supports this approach (see response to Comment 15). Based on recent fishing practices by the fleet, NMFS has determined that this sector will maintain a directed Pacific cod fishery and will be able to prosecute other fisheries (see response to Comment 17).

Comment 31: The analysis does not address the issue of lost revenue from low allocations on either the H&G fleet's other groundfish fisheries or from loss of the target fishery itself. Stating that 21 percent of the annual revenues of the fleet are from cod oversimplifies the picture. The information before the Council on Amendment 80 (June 2006 C–1 Supplemental to Amendment 80) states that the H&G sector's revenues from cod are actually 25 percent (99–04 avg). However, we are more realistically 100 percent dependent on cod because it is critical to all our target fisheries. Not only will we lose some percentage revenue from loss of a directed cod fishery, but we can lose the value of the non-cod groundfish target fishery as well. The Council and the analysis for Amendment 85 also failed to consider that the non-AFA trawl CP sector is dependent on Pacific cod for incidental catch in its flatfish, mackerel, and rockfish fisheries. The first real analysis of the impact of the Council's decision upon the non-AFA trawl CP sector was made by NMFS only several weeks later, and it found that impact to be severe. Substantial bycatch of Pacific cod in these fisheries is inevitable. This bycatch amounts to almost half of the non-AFA trawl CP sector's harvest of Pacific cod. We are no less dependent on our cod revenue than a cod longliner which does not engage in any other groundfish fisheries. The reduction in the Pacific cod allocation to the non-AFA trawl CP sector will affect its entire BSAI fishing effort. Without cod, no one

in the H&G fleet can fish in any BSAI target.

Response: NMFS believes that the non-AFA trawl CP sector has a sufficient Pacific cod allocation for a directed Pacific cod fishery. The size of the directed Pacific cod fishery will depend on the sector's need for Pacific cod as incidental catch in its other directed groundfish fisheries. The EA/RIR/IRFA examined this issue and concluded that the sector's directed fishery is likely to be affected by the allocation. The EA/RIR/FRFA acknowledges the need for the allocation to include incidental catch needs on page 279: ''The problem statement for this amendment emphasizes that the Pacific cod allocations should be adjusted in order to reduce uncertainty in, and provide stability to, the sectors. Allocating appropriate amounts of incidentally caught cod, so that each sector's directed fisheries can be harvested, is an important concern when creating stability.'' Also stated on page 293: ''As mentioned above, the non-AFA trawl CP sector harvests a significant portion of its BSAI Pacific cod as incidental catch in a non-Pacific cod target fishery. Table 3–101 shows that the non-AFA trawl CP sector harvested about 54 percent of its total retained cod harvest in the target cod fishery on average during 1999 to 2003; the remaining 46 percent was harvested as incidental to all other target fisheries, primarily the flatfish fisheries (yellowfin sole, rock sole, flathead sole, Atka mackerel, and Pacific ocean perch). With a lower potential allocation compared to recent years, this sector will likely need to determine how much of its cod allocation will be used as incidental catch to other target fisheries versus to fund the directed cod fishery.'' Also, see response to Comment 17.

What this sector is ''losing'' is the opportunity to harvest an amount of Pacific cod that is larger than its historic use and dependence. The trawl CP sector has not harvested its entire allocation of Pacific cod since allocations began in 1994. The trawl CP sector has been the largest contributor to the yearly reallocations that this amendment is designed to reduce, therefore, the allocation to the trawl CPs is justified. Also see response to Comment 30.

The commenter may be assuming there is hard cap management under Amendment 85, but Amendment 85 does not include this provision (see response to Comment 77).

Comment 32: Incidental catch of Pacific cod allows harvesters to maximize the value of the other target species because it is in large part the highest valued species in each of those non-AFA trawl CP target fisheries.

Response: NMFS acknowledges that Pacific cod is a valuable species. The non-AFA trawl CP sector will have to manage its Pacific cod allocation to accommodate target and nontarget needs to optimize the value of its harvest of BSAI groundfish.

Comment 33: Non-AFA vessels are excluded from any access to the pollock fishery and now the Council is proposing to take away from them a significant portion of the Pacific cod fishery that, over a demonstrated period of years, they have used and are dependent upon, while at the same time augmenting the fishing privileges of AFA trawl CP vessels that have neither been using nor depending upon the cod fishery at more than a minimal level during that same relevant period. That proposal does not comport with this Council's obligation to ''protect other fisheries . . . and the participants in those fisheries . . . from adverse impacts caused by [the AFA] or fishery cooperatives in the directed pollock fishery.''

One final noteworthy recognition by the Notice of Proposed Rulemaking is that the Council decided to ''maximize the opportunity for a directed Pacific cod fishery'' for the AFA trawl CP sector, 72 FR 5662 (col. 1, top), but was content to underfund the non-AFA trawl CP sector to such an extent that it ''may be constrained in its ability to conduct a directed fishery for Pacific cod in order to have sufficient Pacific cod available for incidental catch in its other fisheries.'' Id. (col. 1, bottom). This turns upside down the Council's obligations under the AFA.

Response: Sideboards are intended to prevent a sector from using advantages gained from a rationalized fishery in a fishery that is not rationalized. The current AFA CP Pacific cod sideboard prevents AFA trawl CPs from harvesting a larger share of Pacific cod than the sector harvested before the AFA. Amendment 85 will separate the trawl CPs that currently share one allocation into two sectors, AFA and non-AFA. The AFA trawl CP sector will receive 0.1 percent of non-CDQ TAC above its average harvest history under Amendment 85 and the non-AFA trawl CP sector will receive exactly its average historic harvest. The AFA trawl CP fleet will be restricted to a separate allocation slightly greater than its historic catch from 1995 through 2003, but 62.3 percent below its current sideboard limit for catch of Pacific cod. Although the non-AFA vessels are excluded from the pollock fishery in the BSAI, AFA sideboard provisions will continue to restrict those vessels from participating in other BSAI fisheries, and AFA trawl CPs will continue to be prohibited from fishing in the Gulf of Alaska. Therefore, NMFS has determined that the AFA trawl CP allocation of Pacific cod under Amendment 85 is consistent with the AFA. Also, separating the two sectors will protect the historic catch of the non-AFA trawl CPs better than leaving these two sectors combined with a lower shared allocation that reflects their combined history, but with the same AFA sideboard. NMFS believes the allocations of Pacific cod to the AFA and non-AFA trawl CP sectors are sufficient for each sector's directed Pacific cod fishery and for their incidental catch needs and that the allocation for the non-AFA trawl CP sector will be better protected under Amendment 85 than leaving the sectors combined.

Comment 34: To whatever extent the sector's total catch history is not reflected in the initial allocation made under Amendment 85, there will be insufficient fish in the AFA trawl CP sector's allocation to meet the bycatch needs of the pollock fishery without depleting, at least to some extent, the allocation that would otherwise be available to our directed cod vessel. As a consequence, the directed cod fishery that vessel has traditionally conducted during the early part of the fishing year will likely be curtailed, if not eliminated.

Response: Given that the allocation to the AFA trawl CP sector under Amendment 85 is slightly higher than its average historic harvest, that allocation should be sufficient for this sector to cooperatively manage its allocation and maintain a directed fishery in addition to meeting its needs for incidental catch in its pollock and yellowfin sole fisheries.

Comment 35: The Council increased the allocation to the AFA trawl CP sector so that Pacific cod would not be a limiting factor in prosecuting the BSAI pollock fishery. From 1999 to 2003, the AFA trawl CP sector took 84 percent of its Pacific cod in directed Pacific cod fishing and only 15 percent in the pollock fishery. The proposed rule states that 44 percent of the Pacific cod taken by this sector occurs incidentally in the pollock fishery. This is in contrast to the analysis (15 percent), therefore the proposed rule must be including fishmeal and other factors. Either way, it does not appear that the allocation this sector received under Amendment 85 will be constraining in the pollock fishery.

Response: As stated in the proposed rule, the allocation to the AFA trawl CP sector was chosen to ''maximize the opportunity for a directed Pacific cod fishery and to minimize the potential for an increase in discards of Pacific cod if catch exceeds the MRA.'' The commenter apparently relied on the April 2006 draft analysis and used Table 3–105 which excluded fishmeal. However, the information was revised before submission to the Secretary. The EA/RIR/FRFA includes fishmeal in the revised information in Table 3–101 and states on page 294 that, ''the AFA CP sector harvested about 56 percent of its total retained cod harvest in the target cod fishery on average during 1999–2003, the remaining 44 percent was harvested as incidental to other target fisheries, primarily pollock.'' Additionally, in the final Council motion from April 2006, the Council explicitly noted that in order to determine PSC, the percentage of Pacific cod harvested in the Pacific cod target fishery by the trawl sectors should be calculated on the basis of all cod catch from 1999 through 2003, including that designated for fishmeal production.

Comment 36: Only the hook-and-line CP sector has a large and primary dependence on BSAI Pacific cod; it is the sector with the most dependence on the BSAI Pacific cod resource. Over 80 percent of the wholesale revenues of the hook-and-line CP sector come from BSAI cod.

Response: NMFS agrees that the hook-and-line CP sector is the sector that has the highest portion of its income from its Pacific cod fishery. However, other sectors also depend on Pacific cod for a significant portion of their income.

Comment 37: The H&G sector's Pacific cod use and dependence must be considered and accommodated by Amendment 85, just as was that of the hook-and-line CP sector.

Response: The non-AFA trawl CP sector will receive exactly its 1995 to 2003 average historic harvest under Amendment 85. The hook-and-line CP sector will receive 48.7 percent of the non-CDQ Pacific cod TAC under Amendment 85, which is closer to its average historic harvest than its current allocation of 40.8 percent. The hook-and-line CP sector's new allocation is less in all cases than its share of the retained harvest under various year groupings: from 1995 through 2003, from 2000 through 2003, and from 2004 and 2005 (see Amendment 85 proposed rule Tables 3 and 4). However, its history is much larger than its current allocation due to reallocations of unused Pacific cod from other sectors, primarily the trawl CP sector. Amendment 85 was designed to reduce the amount and frequency of these reallocations to increase stability for all sectors.

Comment 38: Amendment 85 will provide increased stability to the sectors with the most dependence on Pacific cod by removing the uncertainty of the amount of the potential annual harvest for each sector (i.e., reduce annual rollovers). This stability will promote efficiency and planning for those same sectors. For example, the increased stability of the BSAI Pacific cod allocation may facilitate the formation of a hook-and-line CP cooperative that can result in increased utilization and efficiency.

Response: NMFS agrees that Amendment 85 will increase stability in the BSAI Pacific cod fishery.

Comment 39: The Council was consistent with past allocation actions by not including fishmeal when considering dependency on the resource.

Response: Contrary to the commenter's conclusion, the record for Amendment 85 and this final rule clearly demonstrate that the Council not only considered fishmeal data, but included fishmeal in the calculation of catch history for the AFA trawl CP sector allocation. When vessels directly affected by a proposed allocation action process fishmeal, it has been considered. It depends on what sectors or vessels are affected by an action as to whether fishmeal has been included or excluded. Fishmeal was not particularly relevant other past allocation actions. In current and proposed actions, fishmeal was excluded in the preliminary analysis for Gulf rationalization, which has been tabled. There is now an option to exclude fishmeal in the Gulf of Alaska Pacific cod sector-split analysis. However, these actions exclude the AFA trawl CPs, which are the primary producers of fishmeal. Therefore it is consistent to include fishmeal in considering a sector's dependency on Pacific cod under Amendment 85.

Comments on Groundfish Retention Standard Under Amendment 79

Comment 40: The allocation to the H&G fleet affects the Amendment 79 groundfish retention standard (GRS) which the H&G fleet must meet, starting in 2008. Once Pacific cod is closed to directed fishing, and is taken as an incidental catch in other fisheries, it is subject to a maximum retainable amount of 20 percent of the total groundfish catch aboard a vessel. This will make compliance with the groundfish retention standards of Amendment 79 very difficult for most vessels. The Aleutian Island cod fishery is a very high retention fishery, and it essentially is no longer an option for us. According to NMFS inseason managers, the fleet will only have enough fish to fund an early directed cod fishery, which is essential as it occurs simultaneous to the rock sole fishery. The loss of our Aleutian Islands cod target is going to pose a retention hardship for two reasons: one, we lose our March cod target fishery in lieu of bycatch needs for the rest of the year, and two, the H&G fleet's cod will be on bycatch status for the majority of the year. So the reduced allocation has put the fleet in a position of mandatory discards of a mandatory retention species, until or unless the sector is able to form cooperatives under Amendment 80.

Response: As explained in the response to Comment 17, based on the actual TAC for 2007, but with the larger CDQ allocation of 10.7 percent, NMFS estimates there would be 19 to 20 days of directed fishing under the current practices of the non-AFA trawl CP sector. If the sector reduces its incidental catch needs for Pacific cod in its other directed fisheries, its Pacific cod directed fishery could last longer. Typically, the non-AFA trawl CP sector targets Atka mackerel, rock sole, yellowfin sole and Pacific cod in January and the Pacific cod fishery peaks in March. The non-AFA trawl CP sector usually catches 80 percent of its Pacific cod allocation in the first two seasons, which is its seasonal allowance. To meet the GRS after their directed Pacific cod fishery is closed, the non-AFA trawl CPs will need to fish in a manner that maintains incidental catch rates at levels that minimize regulatory discards. Therefore, meeting the GRS under Amendment 85 may be more difficult for the non-AFA trawl CP sector.

If directed fishing for Pacific cod has not been closed to the non-AFA trawl CP sector, then this sector has had to keep their entire catch of Pacific cod, which improves their retention rate. But if the non-AFA trawl CP Pacific cod directed fishery will now be closed most of the year, the non-AFA trawl CP sector must retain up to the MRA. Any catch over the MRA must be discarded and those discards will count in the retention calculation under the GRS, potentially making it more difficult to comply with the GRS.

However, compliance with the GRS should be easier for the vessels that join a cooperative under Amendment 80, which was approved by the Secretary on July 26, 2007. The non-AFA trawl CPs may form harvesting cooperatives by the

start of 2008 if Amendment 80 is implemented by January 1, 2008, which also is the effective date for this final rule to implement Amendment 85. Additionally, the Council has adopted a regulatory amendment that would adjust the accounting period for MRA amounts for particular species including Pacific cod. If approved by the Secretary, this adjustment also would be effective by January 1, 2008, and would reduce regulatory discards and facilitate compliance with the GRS under Amendment 79 to the FMP.

Comment 41: The revised Secretarial review EA/RIR/IRFA (October 2006) merely references the Groundfish Retention Standard (GRS) in one sentence that acknowledges that Pacific cod, as a highly retained species, is important to the non-AFA trawl CP sector in meeting the GRS. Neither Section 2.3.9 (Cumulative Effects) nor Section 2.3.9.1 (Past and Present Actions) mentions the Amendment 79 GRS in relation to the sector's cod allocation and what the loss of its directed fishery and lowered allocation will do to the sector's ability to meet the retention standard. There is no attempt to estimate the impact of a reduced allocation on the ability of the sector, or small vessels in particular, to meet the GRS scheduled for implementation in 2008. The analysis should have considered the impact of the non-AFA trawl CP sector's Amendment 85 allocation on the ability of this sector to function under status quo management (no harvesting cooperatives) when the GRS is imposed in 2008. The tipping point on meeting the GRS with regard to this action is the reduced cod allocation, not the open access race for fish.

Response: The Secretarial review draft EA/RIR/IRFA does discuss the cumulative effects of Amendment 85 in conjunction with the GRS and Amendment 80 in Section 2.3.9 ''Cumulative Effects'' under section 2.3.9.2 ''Recent and Reasonably Foreseeable Future Actions.'' Improved retention rates are the intended effect of the GRS action under Amendment 79. Implementation of Amendments 79, 80, and 85 are planned for 2008. The GRS would be phased in over a four-year period.

The reduced allocation to the non-AFA trawl CP sector likely will reduce its directed fishery, but the vessels still will be retaining Pacific cod to comply with improved retention/improved utilization requirements up to the 20 percent MRA percentage established for Pacific cod after the directed fishery is closed. The catch of Pacific cod beyond the 20 percent MRA threshold must be discarded. However, a vessel's total catch of Pacific cod still would be included in the calculation used by NMFS to assess compliance with the annual GRS ratio of retained catch to total catch. Thus, NMFS expects the GRS program would provide an incentive for the sector to fish for its other targeted groundfish species in a manner that reduces the incidental catch of Pacific cod to the extent practicable. In 2008, the GRS will be at a relatively low level to reflect fleet-wide status quo. As the GRS ratio steps up over the next four years, NMFS anticipates that it will parallel other new proposed management measures that provide additional opportunity for retention of groundfish, including proposed adjustments to the MRA accounting period for some species and Amendment 80.

The EA/RIR/FRFA recognizes that compliance with the GRS by the non-AFA trawl CP fleet with its new Pacific cod allocation under Amendment 85 will be more difficult. However, the purpose of Amendment 85 was to allocate Pacific cod based on historical retained catch in addition to socioeconomic and community concerns, not to allocate Pacific cod in a manner that would facilitate compliance with the GRS. There are other ways the fleet can improve its retention rates of Pacific cod without the allocation it has had in the past. For example, by avoiding fishing in areas with high bycatch rates of Pacific cod.

Regarding the estimation of economic impacts, the Secretarial review draft analysis stated ''The Groundfish PSEIS [Programmatic Supplemental Environmental Impact Statement] noted that the availability and consistency of data limits the ability to analyze the effects of past actions on the economic condition of selected sectors of the Alaska groundfish fishery. According to the Groundfish PSEIS, analyses are also limited by the difficulty of delineating the cause-and-effect relationships between multiple factors and the resultant economic effects. Many factors substantially affect the economic status of the Alaska groundfish fishery. Changes in markets, biological conditions and fishery management regulations can result in changes in the revenues and operating costs of firms participating in the fisheries and changes in fleet size and composition. Isolating the effects of a single factor is seldom possible.''

Amendment 80 will provide target allocations of Atka mackerel, flathead sole, Pacific ocean perch, rock sole, and yellowfin sole to the non-AFA trawl CP sector and allows the formation of harvest cooperatives. Sector allocations and associated cooperatives will allow participants to focus less on harvest maximization and more on optimizing harvest. The Secretarial review draft analysis further notes that, ''Absent a cooperative structure as approved (by the Council) in Amendment 80, it is expected that compliance with the groundfish retention standards and management of a lower Pacific cod allocation to serve both directed and incidental catch needs, will be substantially more difficult.'' Note that the GRS pertains only to non-AFA trawl CP vessels that are ≥125 ft (38.1 m) LOA, not to smaller vessels. However, under Amendment 80, the GRS will apply to all non-AFA trawl CP vessels regardless of length.

Comments on Cumulative Effects

Comment 42: By applying the 13.4–percent allocation to, and deducting the 3 percent State water set-aside and 10.7 percent CDQ allocation from, the 2005 TAC for Pacific cod, the H&G fleet allocation would have been 23,911 mt, a loss of 6,000 mt from the H&G actual harvest in 2005. This represents a loss of $11 million in Pacific cod alone. The H&G fleet fully harvested 23,911 mt of Pacific cod by mid-June in 2005. The fleet would have been unable to harvest its other directed fisheries after June 11th and lost $43 million in its second half of the year target fisheries. In comparing the losses of different fleets, if the longline fleet lost 6,095 mt, that would be a loss of $11 million. The same fish represents a loss of $54 million to the H&G fleet, or, roughly 35 percent of its annual revenues. This was not analyzed in any Amendment 85 document.

Response: The non-AFA trawl CP fleet will have less Pacific cod available than it does under the current allocations, however, this scenario would not happen under Amendment 85. Because NMFS anticipates that the trawl sectors will fully harvest the Pacific cod allocations under Amendment 85, NMFS also anticipates it will need to establish an incidental catch allowance for each trawl sector. Under this final rule, NMFS will develop incidental catch allowances for each trawl sector on an inseason basis, rather than through the annual harvest specification process. The directed fishery for the non-AFA trawl CP sector will likely be shorter than in the past, thus the possible loss, but under Amendment 85 the other non-AFA trawl CP fisheries will be managed with the intent of avoiding closures for lack of sufficient Pacific cod. Also, under this final rule, the non-AFA trawl CP

sector will continue to be managed under a soft cap for incidental catch of Pacific cod.

Comment 43: The non-AFA CP fleet has not received representative allocations. We see that if these allocations were in effect in 2005, the fleet would have shut down in June, losing 35 percent of its annual revenues. This incurs economic harm not only to our fleet but also to remote communities that depend on the activities of the non-AFA CP fleet. As the sole harvesters of target fisheries that will be left in the water because of an inadequate cod allocation, communities will not receive landing tax revenues from that fish, and support service revenues from that fleet. Amendment 80 allocates 90 percent of the Atka mackerel and Pacific ocean perch to the H&G fleet. However, we saw that if Amendment 85, the State water fishery and the increased CDQ were in effect in 2005, half of the Atka mackerel would have been left in the water and all of the Pacific ocean perch, from a June 11th closure. This directly harms the residents of Atka and Adak. Stranding fish is not obtaining optimum yield.

Response: Under this action, an incidental catch allowance of Pacific cod will be established for use in the other non-AFA trawl CP sector directed fisheries. See response to Comment 42.

Comment 44: Effective 2007, the Central Gulf of Alaska Rockfish Pilot Program goes into effect. Originally a two-year program, it was recently extended to five years under the Magnuson-Stevens Act reauthorization. That program limits participation in the Central Gulf rockfish fisheries to 15 H&G vessels. As with Gulf cod, and BSAI pollock, entry into other fisheries by the H&G fleet, and therefore other options, is becoming more restricted. These fisheries would have provided relief in the event that the lowered cod allocation shuts down the H&G fisheries prematurely.

Response: Amendment 85 does not contain measures that would prevent the non-AFA trawl CP sector from prosecuting its target fisheries. NMFS agrees that participation in Gulf of Alaska and BSAI fisheries is becoming more restricted as participation in these fisheries becomes more restricted. See response to Comment 42.

Comments on Small Boat Sector Allocations

Comment 45: The allocation process was reasonably fair and equitable. The jig and <60 ft (18.3 m) LOA fixed gear CV sectors received allocations larger than their respective catch histories. Accordingly, the majority of the other sectors then received allocations smaller than their respective catch histories to offset and ''fund'' those increases. However, the allocations in Amendment 85 were the result of a fair and equitable process and did not discriminate by residency.

Response: Comment noted.

Comment 46: Other considerations given to the small boat sectors under Amendment 85 include (1) adjusting the jig trimester apportionment to put more fish in the A season, (2) establishing a new hook-and-line CV halibut PSC category that enables longline CVs to fish in the summer months, and (3) a new hierarchy of potential rollovers. The Council felt these considerations and the resulting allocations in Amendment 85 amply addressed National Standard 8.

Response: Comment noted.

Comment 47: We support the principle of adequately funding small boat, entry-level fisheries.

Response: Comment noted.

Comment 48: Allocations to the jig and <60 ft (18.3 m) LOA fixed gear sectors were made without consideration of either the Alaska State waters fishery in which such vessels could participate or the likelihood that those Pacific cod allocations will, in fact, be utilized. A result of this over-allocation is that much of the cod non-CDQ TAC allocated to these sectors will rollover, first through various inshore fisheries, including to the trawl catcher vessel fleet; none, however, will likely ever roll back to the H&G sector. Such a result is at odds with the Amendment 85 goal of minimizing rollovers.

Response: NMFS disagrees. The State waters Pacific cod fishery was considered by the Council when the allocations to sectors were made. This fishery was established by the State to meet local needs in the area of Adak, Alaska, in the Aleutian Islands and is not readily accessible to small boat operators fishing in other coastal areas of the Bering Sea. Additionally, the purpose of Amendment 85 is to revise the allocations to the various sectors to more closely reflect historic harvest; a goal of the amendment is to decrease rollovers, not eliminate them. The Council's purpose in giving the small boat sectors allocations greater than their histories was to encourage the growth of these entry-level sectors in accordance with National Standard 8. Since 2001, the <60 ft (18.3 m) LOA fixed gear CV sector has harvested all of its allocation and since 2002 has harvested increasing amounts of rollovers from the jig sector, including in 2006, the first year of the State waters fishery. The allocation to the jig sector is reduced under Amendment 85. Also, the amount of the reallocations from the small boat sectors is historically much smaller than the amount of the reallocations from the trawl sectors, thus supporting the Council's goal of increasing stability.

Comment 49: The non-AFA trawl CP sector was cut in order to fund a 4 percent small boat fishery. When asked by another Council member what was the rationale for the H&G allocation of 13.2 percent (as originally introduced) rather than the mid-point years' average, the maker of the motion stated ''It was really how to fund that 4 percent and make the numbers work and that is my rationale for that number.'' While creating room and incentives for growth in the small hook-and-line and pot catcher vessel and jig fisheries was a goal of Amendment 85, the cost for doing so should not fall on only one of the most cod-dependent sectors. Shifting of cod from one of the most dependent sectors (non-AFA trawl CP) to perhaps the least runs counter to the objective of matching cod allocations with use and historical dependence.

During Council discussion on Amendment 85, the maker of the motion stated that the trawl sector should fund the jig set-aside since the fixed gear sector had been doing that in the past. This was given as the justification for so dramatically decreasing the non-AFA trawl catcher-processor allocation (from recent use above 18 percent to an allocation of only 13.4 percent). The record does not support the assertion that the fixed gear fleet and not the trawl fleet had historically funded increases for the small boat sector. It is not clear from the record that the (proposed) jig allocation actually came from any one sector; however, if the assumption was that the new allocation percentages represented a shift in the responsibility for the jig set-aside from fixed gear to the trawl sector, then all trawl sectors should have been similarly assessed.

There was no consideration or analysis of the possibility, appropriateness, or impact of imposing the burden of funding those increases unequally. The Secretarial review draft analysis expressly acknowledges this, stating that the extra allocations to the small sector were ''deducted . . . principally from the non-AFA sector amounts.'' It is not fair and equitable to impose the burden on the non-AFA sectors and not on the AFA sectors, particularly given the AFA's mandate to the Council to protect the non-AFA fleet from AFA encroachment in fisheries other than pollock. There was no separate analysis, or vote, on spreading

the burden of the small boat incentives unequally. What is clear is that no rationale has ever been given for disadvantaging either the non-AFA sectors generally (which the Secretarial review draft analysis asserts is the group that the Council disadvantaged) or the H&G sector in particular.

The estimated cost, at 2007 TAC and 2005 harvest rates, to the H&G fleet of an estimated $46 million, or 34 percent of their annual revenues, far outweighs the benefit to a small boat fleet which has historically never harvested its allocation. We have no quarrel with the Council's decision to make those adjustments. There is no justification, however, for imposing the burden of funding them entirely or primarily upon the H&G sector.

Response: Neither the non-AFA trawl CP sector nor any other sector exclusively funded the allocation to the small boat sectors. Despite the remarks made by the Council member and based on the average historic harvest from 1995 to 2003, it would appear that neither the AFA trawl CP sector nor the non-AFA trawl CP sector funded the small boat sector allocations because the former will receive slightly above its average historic harvest and the latter will receive exactly its average historic harvest. There is nothing in the Secretarial review draft analysis addressing the impact on other sectors because there were no specific amounts taken from any particular sector to fund the small boat sectors.

For the small boat sectors to receive allocations above their average historic harvest, four sectors will receive less than their 1995 to 2003 average historic harvests: pot CV ≥60 ft (18.3 m) LOA, hook-and-line CP, pot CP, and trawl CV (see paragraph seven of the response to Comment 13). The trawl CV sector is comprised of AFA and non-AFA vessels, so considering all the sectors that will receive an allocation below their average historic harvest, most of them are non-AFA sectors. The non-AFA sectors are not disadvantaged, they merely outnumber the AFA sectors by a ratio of eight to one.

Comment 50: The Council made a policy decision to deviate from its stated goal of conforming actual use and dependency by allocating to the jig and <60 ft (18.3 m) LOA fixed gear CV sectors a combined 2.4 percent above their historic harvest of the Pacific cod TAC. Assuming that the Council would be justified in shifting that 2.4 percent to those sectors because of the predicted salutary impact on coastal communities and related economic and social consequences, it is not legitimate to take that 2.4 percent entirely from other non-AFA sectors. In the analysis for Amendment 85, the potential impact of providing the small boat sectors with an allocation above their actual use and dependency was limited to a scenario in which the extra shares needed to fund that incentive were taken from all other sectors proportionally; no analysis was made of the disproportionate impacts that would result from the scenario, eventually chosen by the Council, of taking that extra 2.4 percent exclusively from non-AFA sectors.

Response: The Pacific cod allocations for the jig and <60 ft (18.3 m) LOA fixed gear sectors did not come exclusively from any particular sectors. As explained in the response to Comment 49, several sectors received less than their 1995 to 2003 average historic harvest of Pacific cod to fund the small boat sectors.

Comments on Reallocations

Comment 51: Amendment 85 will not resolve the reallocation issues raised in the problem statement created by the Council for the action. By over-allocating cod to small, shore-based fisheries that have a history of under-fishing current allocations, and ignoring the important aspect of Alaska's creation of a state waters fishery, this action insures continued rollovers at or above current levels.

Response: The problem statement does not seek to eliminate inseason reallocations, but to decrease them by adjusting Pacific cod allocations to better reflect historic use by sector. Historically, 76.6 percent of the reallocations between 2000 and 2004 resulted from the trawl sectors not harvesting their entire allocations, with a much smaller amount of unharvested Pacific cod coming from the small, shore-based fisheries. Based on this information, NMFS determined that the new allocations to the sectors will reduce reallocations in the future. Also, see response to Comment 48.

Comment 52: NMFS will likely set the incidental catch allowance for the non-AFA trawl CP sector higher than the anticipated need, to ensure that there is enough Pacific cod available to fund other sector fisheries. The cod which is not used in the incidental catch allowance will probably not be enough to fund a separate (late-season) directed fishery, so will roll over to another sector. This will continue the very situation (rollovers) which Amendment 85 was supposed to fix. In effect, the H&G sector loses cod allocation well beyond the amounts that were rolling over in the past, and the allocation scheme ensures that more fish will roll over in the future.

Response: As explained in response to Comment 48, Amendment 85 was not intended to eliminate rollovers. Under this final rule, NMFS will create an incidental catch allowance for the non-AFA trawl CP sector to use for Pacific cod caught incidentally in its other directed fisheries. Because the non-AFA trawl CP sector tends to target Pacific cod early in the year, NMFS will estimate an incidental catch allowance early in the year in order to close the sector's directed fishery while there is enough of the sector's Pacific cod allocation remaining for incidental catch in the other non-AFA trawl CP groundfish fisheries. Whether the allowance is set too high will depend on how well the non-AFA trawl CP sector can avoid Pacific cod incidental catch in its other fisheries. If the sector can lower its incidental catch rate, the directed fishery will have more Pacific cod available for its target fishery. Pacific cod still may be harvested and retained once the directed fishery is closed, albeit at the lower rate of 20 percent under MRA regulations. A large portion of the Pacific cod harvest in this sector historically has been taken as incidental catch. This trend is expected to continue until vessels are able to form cooperatives and opportunities to change fishing strategies present themselves.

The commenter presents only one scenario. NMFS anticipates that without cooperatives, the Pacific cod fishery will be prosecuted much as it has been in the past. NMFS will do its best to ensure that each trawl sector can fully harvest its allocation. If the non-AFA trawl CP sector can reduce its incidental catch of Pacific cod, it may be that the incidental catch amount will be greater than the sector's needs, but not large enough for another directed fishery.

A goal of Amendment 85 is to reduce reallocations, not eliminate them. NMFS has determined that the allocations will result in lower amounts of reallocations from all sectors. If Amendment 80 is implemented by January 1, 2008, NMFS will manage Pacific cod for the non-AFA trawl CP sector in accordance with Amendment 80.

Comment 53: The current allocations (from the 1995 action) do not reflect actual catch by sectors of BSAI Pacific cod, principally due to rollovers of uncaught allocations from the trawl and jig sectors. The trawl sectors consistently have not caught their allocation which has resulted in rollovers from the trawl sectors to the fixed gear sectors every year since 1995 - both before and after SSL mitigation measures. The average rollover from the trawl sectors has been 16,765 mt per

year (1995 - 2005). At the same time, the freezer-longliners are the only sector that consistently caught their entire allocation on an annual basis. Since 1995, the freezer-longliners have also been catching the majority of the rollover from the trawl sectors and uncaught allocations from other sectors as well (jig, pot, etc.).

Response: The EA/RIR/FRFA contains the data concerning this issue in Table 3–24 and it represents the best scientific information available on the subject.

Comment 54: The increasing trend in the fixed gear allocation is a reflection of trawl rollovers. Trawl sectors have not caught their allocations for a number of reasons, one of which is halibut PSC mortality. From 1995 to 2005, the combined trawl sectors caught a decreasing amount of Pacific cod while increasing the rate of halibut PSC mortality by 47 percent (mt halibut PSC per mt Pacific cod). During the same time period, the hook-and-line sectors were catching an increasing amount of Pacific cod while decreasing the rate of halibut PSC mortality by 31 percent. In 2005, the trawl rate was 3.4 times higher than the hook-and-line rate (mt halibut PSC per mt Pacific cod).

Response: The EA/RIR/FRFA examines reallocation among gear types in Section 3.3.5.7 and it represents the best scientific information available on the subject.

Comment 55: NMFS should disapprove the rollover (reallocation) hierarchy contained in the proposed rule because the inshore sectors already have healthy allocations and would be first in line for the rollovers. NMFS should send this portion of Amendment 85 back to the Council with instructions to give non-AFA trawl CPs priority access to the rollovers from the jig and <60 ft (18.3 m) LOA fixed gear sectors.

Response: NMFS has determined that the reallocation hierarchy proposed by the Council is consistent with the purpose and need for Amendment 85 and that it is consistent with the Magnuson-Stevens Act and other applicable law and has approved it with this final rule. This reallocation hierarchy is consistent with the Council's decision to increase the harvest opportunities for the fleets that deliver shoreside to coastal fishing communities, a consideration under National Standard 8.

Comment 56: Prioritizing rollovers to the AFA trawl CP sector would help accomplish the Council's goal of ''maximizing to the extent practicable'' the opportunity for the AFA trawl CP sector to conduct its directed cod fishery at the beginning of the year. Knowing that the surplus ''C season'' cod that has traditionally rolled over from the AFA trawl CP sector during the last half of the fishing year would be available to support nontarget needs in the AFA trawl CP sector during the pollock A and B seasons would help facilitate inseason incidental catch management so as to permit full funding of the directed cod fishery that one AFA trawl CP vessel conducts early in the year.

Response: See response to Comment 55 which is applicable to the AFA CP sector as well as the non-AFA CP sector. Also see the responses to Comments 13 and 25 for more information regarding the AFA trawl CP sector allocations.

Comments on Process Followed for Adoption of Amendment 85

Comment 57: The Council's action was taken too quickly for the regulated community to provide informed public comment. The process for consideration of Amendment 85 made it difficult, if not impossible, for the public to comment effectively on, or the Council to understand the impacts of, the decisions it was making. The Magnuson-Stevens Act generally prescribes that a regional fishery management council will hold public hearings in conjunction with the FMP amendment process. See 16 U.S.C. 1852(h)(3). The law also provides for a separate opportunity for ''interested persons'' to make comment at ''business meetings of a Council.''

Response: The public was provided ample notice and opportunity to comment on Amendment 85 in accordance with APA and Magnuson-Stevens Act procedures. The public had several opportunities to comment on Pacific cod sector allocations at Council meetings prior to the Council's final action in April 2006 and during the comment period on the FMP amendment. The December 2004 Council meeting was the first opportunity the public had to comment specifically on Amendment 85 at the first presentation of the discussion paper for Amendment 85. Amendment 85 was on the agenda of every Council meeting from December 2004 until final action in April of 2006, for a total of eight Council meetings. The **Federal Register** notice for the April 2006 Council meeting included a statement that final action would be taken on Amendment 85. A draft analysis of Amendment 85 was prepared by the Council and made available for public review prior to the Council taking action. The analysis was then further refined to reflect the effects of the Council's action prior to submission for Secretarial review.

Comment 58: The non-AFA trawl CP sector lacked the opportunity to discern and explain the implications of the Council's actions before the Council's final decision making. As a result, the non-AFA trawl CP fleet focused its public testimony in support of options that best mirrored the sector's recent use and dependence. The first indication that the Council was developing an option that included a non-AFA trawl CP sector allocation that was at the lowest end of the range under consideration and heavily weighted pre-full retention and pre-AFA years, came when the Council began their deliberations. No further public comment was allowed before final action, however. The non-AFA trawl CP sector has no representation on the Council. Without the benefit of an H&G representative on the Council to participate in the deliberations, the Council members cannot and clearly did not fully realize the impact of their actions. The result was the non-AFA trawl CP fleet was denied a reasonable opportunity to discern and explain the implications of the Council's proposed action before final action was taken.

Response: There were many opportunities for the public to comment on Amendment 85 (see the response to Comment 57). Several allocation options were presented in the draft analysis that was released to the public in March 2006. These options included allocations to the non-AFA trawl CP sector that ranged from 12.7 to 16.2 percent of the non-CDQ BSAI Pacific cod TAC. The April draft of the EA/RIR/IRFA presented the Council with the information it needed to make the allocation decisions in various tables, with more information on fishmeal presented to the Council and the public at the April Council meeting before public testimony and final action by the Council. After receiving public comment, the Council chose the option to select percentages for Pacific cod allocated to each sector that fell within the range of percentages analyzed. Please see the response to Comment 3 for an explanation of the consideration of catch history from 1995 through 2003. No year was weighted more heavily than any other. Only the first three years of history out of a total of nine years considered were before full retention and the AFA. Not having a representative on the Council should not negatively impact a sector. The Council members take a sworn oath to manage in the best interests of all and are to act impartially.

Comment 59: No preliminary preferred alternative was identified by the Council. As a result, the analysts,

public, and the Council did not have the opportunity to fully understand, comment on, and evaluate the impacts of Amendment 85. Identifying a preliminary preferred alternative before final action may not be required, but for complicated actions it should be.

Response: As the commenter notes, the Council was not required to identify a preliminary preferred alternative before taking final action on Amendment 85. The analysis before the Council in April 2006 provided the Council and the public with the information necessary for final action on Amendment 85. Each option under consideration for each component was fully analyzed and when an option in one component may have affected options under consideration in another component, those impacts were identified and explained in such a way that the Council and the public could understand the impacts of its decision. For example, seasonal allowances were changed to maintain to the extent possible the current percentage of non-CDQ Pacific cod TAC available for harvest in the early part of the year when fishing for Pacific cod is more advantageous. NMFS notes the commenter's statement that a preliminary preferred alternative should be identified by the Council prior to taking final actions that are complicated.

Comment 60: The Amendment 85 decision making process was rushed, its analyses were inadequate, and the impacts of the Council decision were not well understood. When the Council chose the ''mix and match'' approach instead of a ''packaged alternative'' and moved directly to final action, rather than selecting its desired allocation as a preliminary preferred alternative for further analysis and public comment, the Council basically acted without understanding the impacts of this decision. When one aggrieved stakeholder was able to convince Council members that it suffered from certain unintended consequences, the Council took the matter up again to institute a discrete fix for one vessel. However, the law requires that all members of the public have an opportunity to understand the impacts of a proposed action and an equal opportunity to be heard in the process.

As originally passed, the Council recommended that Amendment 85 allocate the H&G sector an amount of Pacific cod that was just over its average harvest, 13.7 percent during the 1995–2003 period. The telling fact that this process devolved into a matter of political compromise rather than informed decision making, in violation of National Standard 2, was that the Council decided to reconsider final action upon discovery of an ''unintended consequence.'' Expressing concern that the 1.5–percent allocation chosen for the AFA catcher-processor sector might disproportionately impact the one vessel in that sector that targets cod (notwithstanding the recent use of that sector in the range of 1 percent), the Council voted to increase the AFA catcher-processor sector's allocation to 2.3 percent. Part of the Pacific cod that went to ''fund'' that increase came from the H&G sector, which ended up with a reduced allocation of just 13.4 percent.

This action should also have been analyzed in light of the statutory protections the American Fisheries Act grants to non-pollock fisheries. Such weighing and analysis was lacking in this instance. There was no opportunity for public input during the reconsideration and the Amendment 85 allocation was made without the Council having made a reasonable record of how the allocation it chose for the AFA sector ''protects'' the non-AFA fleets. Further, this allocation exceeds the AFA catcher-processor sector's current use (i.e., since 2001) by as much as 90 percent. It was incumbent upon the Council to make a good-faith effort to examine and fulfill its duties to the non-AFA sectors that funded this reallocation. That was not done. The stated rationale for the revision was the (highly questionable) bycatch needs of the AFA trawl CP sector. At the very least the non-AFA trawl CP fleet had far greater bycatch needs that were ignored not only in Amendment 85 and in Council discussion but were exacerbated once a table using fishmeal was presented during the Council discussion, but not analyzed in the EA/RIR/IRFA, surfaced. But no opportunity was allowed for public comment at that point, and there is no non-AFA trawl CP sector representative on the Council who would have been in a position to alert Council members to the disparity.

We support full Secretarial disapproval of the amendment based on lack of adequate analysis which resulted in the Council not fully understanding the impact of their actions, and based on the fact that the Council action did not take the non-AFA trawl CP recent history into consideration. The ultimate impact has been to jeopardize the viability of the H&G fleet, in particular, the vessels which are heavily reliant on cod.

Response: The public was notified that final action on Amendment 85 would be taken at the April 2006 Council meeting (see response to Comment 57). A draft analysis was prepared prior to that meeting. Because there were questions about including Pacific cod that was turned into fishmeal as the primary product in the calculations of retained legal harvest, tables showing that information were passed out at the Council meeting (see response to Comment 2) prior to public testimony and the Council's deliberation, so the public had an opportunity to respond to the information. The fishmeal data were included in the Secretarial review draft analysis. The Council and NMFS consider fishmeal to be part of the retained legal harvest for Pacific cod. Fishmeal is the primary product from the AFA trawl CP sector's incidental catch of Pacific cod. To exclude it from the AFA sector's history would be equivalent to excluding the non-AFA trawl CP's sector's incidental catch history from its other fisheries. Excluding fishmeal from the AFA trawl CP sector's harvest would result in a harvest share of 0.8 percent, or 65 percent below this sector's new allocation, not 90 percent. Catch history was calculated over a number of years, not just one or two recent years. The Council chose allocations from the within the range of percentages analyzed to balance catch history with consideration of socioeconomic and community factors, including allocations to the small boat sectors that were above their average historic harvest. Members of all sectors and the public at large have had an equal opportunity to comment on the Council's allocation decision, and their opinions have been considered, as evidenced by this response to comments section of the final rule. No procedural irregularity occurred during the development of Amendment 85. The information presented in the Secretarial review draft analysis for this action represents the most current, comprehensive set of information available, recognizing that some information, such as operational costs, is unavailable.

The original proposal before the Council was to allocate 13.2 percent of the non-CDQ Pacific cod TAC to the non-AFA trawl CP sector. In a later motion, the jig sector allocation was cut from 2.0 percent to 1.5 percent and the non-AFA trawl CP sector allocation was increased to 13.7 percent, partly in consideration of the State waters Pacific cod fishery. This clearly shows that there were advocates on the Council for the allocation needs of the non-AFA trawl CP sector. The following day, the Council voted to reconsider its action because the AFA trawl CP ''allocation of

1.5 percent was not reflective of the historic usage and that it would better lie somewhere between 2 and 2.5 percent'' and ''not to provide for a directed fishery for any one vessel because there is no guarantee that there will be ongoing directed fishing by any one vessel with these allocations.'' The increased allocation to the AFA trawl CP sector this second day resulted in a deduction from several sectors: 0.3 percent from the non-AFA trawl CP sector, 0.3 percent from the hook-and-line CP sector, 0.1 percent from the jig sector, and 0.1 percent from the pot CV sector. As explained in previous responses, NMFS has determined that these allocations are fair and meet the goals of the problem statement.

Council members are to act impartially and in the best interests of all. In fact, several members of the Council spoke on behalf of the non-AFA trawl CP sector during the Council deliberations on Amendment 85. This is one reason the original proposal of a 13.2–percent allocation to the non-AFA trawl CP was initially increased to 13.7 percent. Again, the final allocation of 13.4 percent is exactly the non-AFA trawl CP sector's average historic harvest from 1995 through 2003. Amendment 85 ''protects'' the non-AFA trawl CP fleet in part by separating the trawl CPs into two sectors. Also see responses to Comments 13, and 33, and 58.

Comment 61: No detailed or legally sufficient impacts analysis of the alternatives was ever prepared. Amendment 85 and its supporting analyses were simply not ready for final decision at the April 2006 meeting. Rather, they should have been further developed and a preliminary preferred alternative specified. By choosing a set of percentages in the manner that the Council did, and taking final action in the same meeting, there was no opportunity for development of a legally sufficient analysis of the likely impacts of the hybrid alternative.

The Council reserved itself the option of simply setting allocations for each sector within the range of percentages correlated with one of the baseline periods for a particular sector. However, the RIR and IRFA contained no detailed analysis of the tangible, practical impacts of these proposed allocations on the H&G fleet's fisheries and fishing strategies as they are legally required to be, and that NMFS inseason management was able to ascertain after the Council's vote on Amendment 85. The Council's deliberations regarding the factors the Magnuson-Stevens Act requires it to consider in allocation decisions was not (nor could it have been), informed by objective analysis.

The allocation and its management to the H&G sector does not meet the objectives of the Problem Statement, and the effects were not adequately analyzed in either the Amendment 85 EA/RIR/IRFA (March draft) or the Secretarial Review Draft. Nowhere is the impact of any allocation, under any year option, analyzed as to its real operational impact on the sector: the sector's need to balance target versus incidental cod, and loss of the ability to target cod or prosecute flatfish fisheries with such a reduced allocation. With the H&G sector receiving such different treatment than other sectors, or different from what was presented in the analysis, it was virtually impossible for the sector to provide appropriate public comment. Council members did not realize the impact that such a low allocation had or the instability placed on the fleet from losing their directed fishery. Nor did they know the effect on the sector's ability to attain certain groundfish retention levels. These changes happened in the Council deliberations, so the sector could not comment. Without such analysis, and without H&G representation on the Council, Council members did not make an informed decision.

The CDQ Pacific cod allocation increase from 7.5 percent to 10.7 percent and the State of Alaska 3 percent share of the ABC will affect Amendment 85's ability to minimize reallocations, and to correlate each sector's allocation with dependency and use. The amendment should be only partially approved or there should be a mandate to review the action in the near future to determine how well the problem statement was addressed.

Response: As is the normal procedure, a draft EA/RIR/IRFA was prepared prior to the April Council meeting and was made available to the Council and the public prior to the Council taking action on Amendment 85. The analysis was then further refined to reflect the effects of the Council's action prior to submission for Secretarial review. Impacts on the non-AFA trawl CP sector and all the other sectors were well analyzed prior to Council's final action and expanded upon in the analyses that were released for public comment with the FMP and the proposed rule. The analysis and other materials provided to the Council before it took final action were more than adequate and the Secretarial review draft analysis is legally sufficient. As stated in the IRFA, ''Because this action is principally designed to 'reapportion' access to the cod resource among current user groups (at the 'sector level'), by definition, it represents tradeoffs.''

The Secretarial review draft analysis expects that ''management of a lower Pacific cod allocation [to the non-AFA trawl CP sector] to serve both directed and incidental catch needs, will be substantially more difficult,'' without a cooperative structure as approved in Amendment 80. The non-AFA trawl CP sector will receive exactly its average historic harvest. This is lower than its more recent harvests, so if the sector reduces incidental catch of Pacific cod in other directed fisheries, it will have more Pacific cod available for its directed fisheries. However, the non-AFA trawl CP sector did not receive ''different treatment than other sectors, or different from what was presented in the analysis'' beyond dealing with issues unique to its sector, all of which was presented in the Secretarial review draft analysis. In determining the average historic harvest of the AFA trawl CP sector, the Council chose not to include the history of nine AFA vessels (AFA 9) that were bought out under the AFA, the history of which was included when its Pacific cod sideboard was created. Therefore, under Amendment 85, the AFA trawl CP sector will have an allocation that is substantially below its former Pacific cod sideboard allocation that included AFA 9 history. By excluding from consideration the AFA 9 history, which was extinguished by section 209 of the AFA, and by separating the two sectors, Amendment 85 protects the non-AFA trawl CPs. These two sectors will no longer be sharing a single allocation that would be lower under Amendment 85 if the sectors were left together with the same sideboard for the AFA trawl CPs.

The Council took note of a possible legislated increase in the Pacific cod allocation to the CDQ Program (see response to Comments 74 and 75) and of the State waters Pacific cod fishery (see response to Comment 48) when it took final action. NMFS has determined that the problem statement was well addressed by the Council.

Comment 62: Because the analytical and public comment processes were short-circuited, the Council's decision was uninformed and arbitrary, based more on compromise than a reasoned consideration of the relevant Magnuson-Stevens Act factors and the purposes which the Amendment was intended to serve. The analysis available to the Council at the time of decision making, as well as the decision making record, is devoid of any empirical, analytical linkage between the allocation scheme chosen and the Magnuson-Stevens Act standards Congress requires a council to

consider when allocating fishing privileges. The Magnuson-Stevens Act and Amendment 85 itself specify goals and requirements for this Pacific cod allocation scheme but the Council's cursory and flawed deliberative process on Amendment 85 failed to connect the Council's choices with these goals and requirements. Accordingly, the action taken by the Council on Amendment 85 represents arbitrary and capricious decision making, in violation of the Magnuson-Stevens Act and the APA. The Magnuson-Stevens Act establishes standards with respect to the relevant criteria a fishery management council must consider when, as here, it makes resource allocations. Specifically that sectors of industry are treated equally, that residents of different States are treated equally, that socioeconomic concerns are taken into consideration, that fisheries are managed to optimum yield, that allocations are for the net benefit of the Nation, current participation, historical use, dependence on the fishery, and other factors. The APA requires that the impacts of Federal regulations be understood and considered at the time decisions are made. The Council's cursory and flawed deliberative process on Amendment 85 failed to connect the Council's choices with these goals and requirements (under administrative law precepts). Accordingly, the action taken by the Council on Amendment 85 would be arbitrary and capricious decision making if implemented.

Response: The analytical and public comment processes for Amendment 85 and this final rule were not short-circuited, as explained in response to Comment 57. The Council discussed its action in some depth with various allocation amounts presented before final action was taken, including how the Magnuson-Stevens Act National Standards were met by Amendment 85. The impacts of Amendment 85 were discussed in the analysis available to the Council and to the public before the April 2006 Council meeting. The Council's decisions were guided by its problem statement which specified the factors that would be considered in its allocation decisions. The draft EA/RIR/IRFA addressed the Magnuson-Stevens Act requirements and the Council fulfilled these requirements. The allocations chosen were within the options considered in the draft analysis. Decisions by NMFS on FMP amendments and proposed regulations recommended by the Council must be consistent with the Magnuson-Stevens Act and APA. NMFS has determined that Amendment 85 meets all APA and Magnuson-Stevens Act requirements (see response to Comment 57).

Comment 63: The EA/RIR/IRFA states that the non-AFA trawl CP fleet does not target on pollock because the headed and gutted pollock sells for less than the cost of production. This is inaccurate. While the price of H&G pollock has been low in the past, there were several H&G vessels that had a viable pollock target and market prior to the AFA. Since the AFA, the value of H&G pollock has increased dramatically and the fleet has suffered from not having access to this vast and valuable resource, which comprised 75 percent of the total allowable 2 million mt catch in the BSAI in 2006.

Response: The statement in the EA/RIR/IRFA was in reference to the fleet in the GOA. Given the comment, NMFS determined the statement was confusing and revised the final analysis by removing the statement.

Comment 64: The Amendment 85 package provided for Secretarial review not only inadequately estimates the impact on the non-AFA trawl CP fleet of its dramatically reduced allocation but primarily cites Amendment 80 cooperative provisions as the tool that will help mitigate the adverse impacts of Amendment 85 and allow the sector to gain the most value out of its reduced Pacific cod allocations. This seems to violate the principal of evaluating the impacts and providing the rationale for the current proposed amendment without relying on a future action not yet implemented.

Response: NMFS cannot find support for the commenter's assertion that the Amendment 85 package submitted to the Secretary primarily cites Amendment 80 cooperative provisions as justification for approval of Amendment 85. The response to Comment 13 explains how the analysis for Amendment 85 and this final rule adequately present information concerning the impacts of the action on all sectors, including the non-AFA trawl CP sector. NMFS partially approved Amendment 85 based on the record for Amendment 85 and not on any possible future actions that might mitigate its impacts.

Comment 65: NMFS cannot now substitute post hoc rationalizations for the absent Council deliberation based on informed public participation on these central issues. The Council's decisional record for Amendment 85 lacks the required support for the recommendations the Council made.

Response: NMFS is required to examine and consider the entire record before making a decision whether to approve, disapprove, or partially approve an action recommended by a council. After considering the entire record developed for Amendment 85 and the proposed rule, NMFS decided to partially approve Amendment 85 and partially approve the proposed rule for reasons provided in this preamble.

Comment 66: By allocating cod based on rates of harvest that stretch back as far as 1995, while ignoring current use and dependence of the H&G sector, Amendment 85, as recommended by the Council, violates the substantive provisions of the Magnuson-Stevens Act (factors to take into account when allocating fishing privileges).

Response: National Standard 4 requires allocations to be (1) fair and equitable, (2) reasonably calculated to promote conservation, and (3) carried out in such manner than no particular individual, corporation, or other entity acquires an excessive share. In compliance with the requirement that the allocation be fair and equitable, the Council used catch history from 1995 through 2003. The Council also considered more recent catch history from 2004 and 2005, but chose not to develop allocations including that history. (See response to Comment 3.) The Council took into account current use and dependence of the non-AFA trawl CP sector, and all other sectors, in making its allocation recommendations, but ultimately did not use them exclusively. Nothing in the Magnuson-Stevens Act or other applicable law requires the Council or NMFS to develop allocations that include present participation, just that the information be considered and a reasonable explanation provided if it is excluded. Socioeconomic considerations and community factors, such as favoring the small boat fisheries, also were considered. Also see responses to Comments 3 and 48.

Comment 67: The commenter believes that Amendment 85 is consistent with the National Standards of the Magnuson-Stevens Act and other applicable law. The resulting sector allocations from Amendment 85 take into account the catch history, historic dependence, and ability to engage in other fisheries by each of the sectors. Consideration was also given to the potential impacts and sustained participation of coastal communities and small-boat fishermen.

Response: NMFS agrees that Amendment 85 as partially approved by NMFS is consistent with the Magnuson-Stevens Act and other applicable law. The remaining comments are noted.

Comment 68: The allocations in Amendment 85 were the result of a fair

and equitable process and did not discriminate by residency.

Response: Comment noted.

Comment 69: Amendment 85 is consistent with the Problem Statement and purpose of the action.

Response: Comment noted.

Comment 70: Keep the proposed rule/final rule process moving forward on the regulatory track so that Amendment 85 can be implemented prior by January 1, 2008 (i.e., in place for the 2008 season), because revisions to the allocations are long overdue.

Response: This final rule will be published in sufficient time to be effective on January 1, 2008.

Comments on Prohibited Species Catch Allowances

Comment 71: The Secretary should disapprove the PSC allocation portion of Amendment 85. Amendment 85 would allocate PSC for Pacific cod separately to each trawl sector for use only in the Pacific cod fishery. Any sector which has PSC remaining after the cod fishery is completed will be unable to use it anywhere else. Sectors with sufficient PSC to harvest their cod allocation will have no incentive to use it carefully; there would be little incentive for minimizing bycatch rates in other sectors and could result in increased PSC use, in violation of National Standards 1 and 9 of the Magnuson-Stevens Act. After the H&G sector prosecutes its Amendment 85 directed cod fishery, which NMFS estimates will last only about 10 or 11 days, there still may not be enough cod and associated prohibited species catch (PSC) of halibut and crab for the H&G sector to fully prosecute its other directed groundfish fisheries. Non-AFA trawl CPs will not be able to fund their PSC needs from other PSC allocations (e.g., from the yellowfin sole fishery group) because there will not be enough available. NMFS inseason management could re-allocate unused PSC to other sectors, but that would occur late in the year when it clearly was not going to be used, and would likely be too late for it to be effectively used by other trawl sectors. NMFS can simply continue to manage PSC in the trawl sectors as it does now to optimize the total catch in all trawl fisheries.

Response: NMFS did not approve the proposed apportionment of Pacific cod trawl fishery halibut and crab PSC allowances among the trawl sectors for the reasons discussed above under the section ''Element of Proposed Rule Not Approved.'' NMFS did approve the hook-and-line PSC apportionment. Additionally, a detailed response to comments regarding the non-AFA trawl CP sector's directed Pacific cod fishery and incidental catch of Pacific cod is provided in response to Comments 13, 42, and 52.

Comment 72: The PSC sideboard allocation specified for the AFA trawl CP sector's Pacific cod fishery should be treated as a ''cap'' or ''limit'' on PSC usage in the sector's directed Pacific cod fishery--not as an allocation to that particular fishery. AFA CP sideboards on PSC species are not currently apportioned among target species. None of the AFA trawl CP PSC should be allocated in a way that might result in any of that PSC allocation being ''stranded'' in a particular fishery and unavailable to support other non-pollock target fisheries in which the AFA trawl CP sector's vessels may want to participate (e.g., yellowfin sole).

Response: NMFS did not approve the proposed halibut and crab PSC apportionments for the trawl sectors. Additional explanation for this decision is provided earlier in the preamble under the section ''Element of Proposed Rule Not Approved.''

Comment 73: The Secretary should disapprove the PSC allocation method contained in Amendment 85, instead allocating PSC using current methodology or the allocation method contained in Amendment 80, depending on the implementation date for Amendment 80.

Response: NMFS did not approve the proposed trawl PSC apportionments. PSC will be allocated under the current regulatory method until that method is changed by future rulemaking as described in response to Comment 72. NMFS notes that the proposed rule for Amendment 80 includes new provisions for PSC apportionments among trawl sectors.

Comments on CDQ Allocation

Comment 74: After Amendment 85 was passed by the Council, the CDQ allocation was modified by the Coast Guard Bill and subsequently by the Magnuson-Stevens Reauthorization Act. The commenter assumes that the 10.7 percent total allocation to the CDQ Program will be analyzed in the proposed rule.

Response: The 10.7–percent allocation to the CDQ Program was analyzed in the EA/RIR/IRFA for the proposed rule and the EA/RIR/FRFA for this final rule.

Comment 75: The Magnuson-Stevens Act now requires an allocation to the CDQ Program of 10.7 percent. The Council's final action on Amendment 85 adhered to the prior 7.5 percent CDQ allocation, and the Council has taken no further action since that time. Accordingly, it is not accurate to say that the ''Council'' proposed a 10 percent directed fishing CDQ allowance in submitting Amendment 85 to NMFS. The only proposal upon which the Council has voted chose to leave the CDQ allowance at 7.5 percent. Council staff cannot revise the CDQ allocation proposed by the Council to bring it into compliance with existing law. The Magnuson-Stevens Act requires the Secretary under such circumstances to remand the proposal to the Council, with an explanation, so that the Council may consider what appropriate corrective action to take. The proper course at this point to resolve the problem is to decline to adopt the proposed rule and to remand the sector and CDQ Program allocations to the Council for its consideration and action pursuant to the law. A remand would permit the Council to undertake a proper analysis of the unanalyzed impact of taking a larger CDQ share, before the Council finalizes new allocations.

Response: The Council determined that no further action on Amendment 85 was needed by the Council after the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241; Coast Guard Act) was passed because its decision in April 2006 contemplated a Congressional adjustment to the allocations of Pacific cod to the CDQ Program. The Council's intent was that the CDQ allocation under Amendment 85 would be either 7.5 percent of the Pacific cod TAC or whatever allocation was Congressionally legislated when Amendment 85 was submitted to the Secretary for review. The Council voted to maintain the status quo level of a 7.5 percent CDQ Pacific cod allocation as its preferred alternative, but inherent in that vote was the Council's acknowledgment that legislation likely would be enacted in the coming months that would overrule whatever action the Council took on the CDQ Program allocation at its April 2006 meeting. The Council clearly recognized that legislation affecting the CDQ Program was imminent and could be enacted subsequent to its decision but before Secretarial review of Amendment 85. It was recognized during Council discussion that the proposed rule would need to accommodate any legislated increase in the CDQ allocation. The President signed the Coast Guard Act into law on July 11, 2006, after the Council selected a final preferred alternative for Amendment 85. The Coast Guard Act amendments to the Magnuson-Stevens Act included a

change to make the CDQ Program Pacific cod allocation a directed fishing allocation of 10 percent upon the establishment of sector allocations (Section 305(i)(1)(B)(ii)(1)). NMFS notified the Council at its October 2006 meeting that the increased CDQ allocations required under the Coast Guard Act would have to be incorporated into Amendment 85 for it to be consistent with the Magnuson-Stevens Act, and that the changes were being incorporated into the regulations implementing Amendment 85. The Council asked about its ability to review the changes being made to Amendment 85 to comply with the Coast Guard Act, and was advised by NOAA General Counsel that because Amendment 85 had not yet been submitted to the Secretary for review, the Council could request further review it if desired. The Council did not request further review of Amendment 85 at this meeting or at any other time prior to its submission of Amendment 85 to the Secretary.

Subsequent to the Coast Guard Act, the Magnuson-Stevens Act was reauthorized and signed into law on January 12, 2007. These more recent changes to the Magnuson-Stevens Act increase the CDQ Program's Pacific cod allocation to 10.7 percent (directed and nontarget combined) effective January 1, 2008. (Note: A provision was also included to trigger this increase in 2007 if a sector of the BSAI Pacific cod fishery forms a fishing cooperative in 2007.) In accordance with section 304(b)(1)(B) of the Magnuson-Stevens Act, NMFS determined that the originally submitted proposed rule for Amendment 85 that contained a 10 percent Pacific cod CDQ Program allocation with an additional amount for incidental catch was inconsistent with the Magnuson-Stevens Act, and returned it to the Council to be revised. Thus, the proposed rule was revised to contain regulatory amendments to increase the CDQ Pacific cod allocation to 10.7 percent to be consistent with the Magnuson-Stevens Act. The increased allocation of Pacific cod to the CDQ Program was within the allocations to the Program analyzed in the March draft of the EA/RIR/IRFA.

Although the revised submission from the Council of the proposed rule for Amendment 85 incorporated these new changes, the FMP language could not be changed because it had already been published and was available for public comment. Therefore, NMFS did not approve those parts of the FMP amendment that are now inconsistent with the Magnuson-Stevens Act and refer to a 10–percent allocation of Pacific cod TAC as a directed fishing allowance to the CDQ Program, specify the creation of an incidental catch allowance of Pacific cod for the CDQ Program, or reference changes to the CDQ Program Pacific cod allocations through the Coast Guard Act. Amendment 85 as approved by NMFS and the regulations in this final rule rely on the Magnuson-Stevens Act requirement for a 10.7–percent allocation of Pacific cod TAC to the CDQ Program rather than a specific FMP provision.

See response to Comment 74 regarding the analysis of the 10.7–percent allocation of Pacific cod to the CDQ Program.

Comment 76: The loss of Pacific cod TAC to the CDQ Program is felt by all sectors, but it is not felt proportionately to recency or dependency. Additionally, 93 percent of the CDQ cod is directed to their freezer longline partners, and half of that fleet is involved in harvesting CDQ. Therefore they get the bulk of it back as a sector, and half the sector benefits.

Response: Because the CDQ Program allocation of Pacific cod is subtracted from the Pacific cod TAC before any allocations are made to the non-CDQ sectors, all non-CDQ sectors are affected proportionately by the CDQ Program allocation. NMFS acknowledges that many of the same hook-and-line CP vessels that fish the non-CDQ BSAI Pacific cod fishery partner with the CDQ groups to prosecute the BSAI Pacific cod CDQ fishery. While some participants in the hook-and-line CP sector will have access to the increased CDQ cod quota and receive some benefit from the harvest of CDQ cod, the cost of the royalty payment to the CDQ groups, and other program requirements, such as 200 percent observer coverage, reduce the benefit to the non-CDQ hook-and-line CP sector.

Comments on Hard Cap Management of Pacific Cod Incidental Catch Allowances

Comment 77: We support NMFS's management of the trawl sector's incidental catch allowance as outlined in the proposed rule, which is that inseason management manages each trawl sector to a soft cap. The non-AFA trawl CP sector testified in support of hard cap management, however it did so in a truly different context. It was inconceivable that the fleet would be so disenfranchised from its last seven years of catch history share. We respectfully request disapproval of hard cap management for the non-AFA trawl CP fleet and soft cap management of Pacific cod H&G incidental catch allowance under both Amendment 85 and Amendment 80.

Response: Although representatives of the non-AFA trawl CP sector may have testified in support of hard cap management of their Pacific cod allocation, the Council did not include such a requirement in their final action on Amendment 85. Therefore, Amendment 85 and this final rule do not include such a provision. NMFS will continue soft cap management of incidental catch of Pacific cod for the non-AFA trawl CP sector under this final rule. However, NMFS notes that Amendment 80 as approved by the Secretary includes hard cap management requirements.

Comment 78: The non-AFA trawl CP sector allocation will be managed more conservatively than other sector allocations, i.e., a ''hard cap'' allocation that when reached will prohibit further fishing in the BSAI. The action on Amendment 85 should not be predicated on mitigation from Amendment 80. The Secretary should disapprove that portion of Amendment 85 that specifies that the non-AFA trawl CPs will be managed under a hard cap.

Response: Neither Amendment 85 nor this final rule require that the non-AFA trawl CP sector's Pacific cod allocation be managed as a hard cap. See response to Comment 77. Also see response to Comment 64 that NMFS' Amendment 85 decision did not rely on Amendment 80 for mitigation.

Comment on Commercial Fisheries

Comment 79: All quotas allocated should be cut in half this year and all quotas should continue to be cut by 10 percent in each succeeding year. The figures that show healthy stocks gained from the commercial fishing profiteers are a conflict of interest for them because they financially gain from telling this agency everything is great. Ban bottom trawling entirely now.

Response: NMFS conservatively manages the BSAI Pacific cod fishery based on the best scientific information available. To ensure conservation of the resource, the status of the Pacific cod stock is reviewed by NMFS and the Council each year through a public scientific review process before the TAC is allocated. The commercial fishing industry does not set the harvest levels. This action is intended to allocate Pacific cod TAC among various gear groups. NMFS reviewed the impacts of Amendment 85 in the EA/RIR/FRFA and concluded that it would not result in a significant impact on the human environment. This action is not intended to ban specific gear types. Banning trawling or reducing harvests

are not the goals of this action and would need to be addressed in a separate regulatory action developed through the Council process.

Classification

The Acting Administrator, Alaska Region, NMFS, determined that Amendment 85 is necessary for the conservation and management of the Pacific cod fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A FRFA was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The need for and objectives of this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. The legal basis for this action is also contained in the preamble. A summary of the FRFA follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

No comments were received that raised significant issues in response to the IRFA specifically, therefore, no changes were made to the rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 85 on different sectors of the industry. For a summary of the comments received, refer to the section above titled ''Comments and Responses.'' In response to public comment, one sentence was removed from the RIR regarding the non-AFA trawl CP sector targeting pollock because it was an ambiguous statement that related to activity in the Gulf of Alaska and the statement has no bearing on any decision in the analysis. Additionally, NMFS did not approve the proposed regulatory change that would have subdivided among trawl sectors the annual PSC limits apportioned to the Pacific cod trawl gear fisheries. The reasons are discussed above under the section ''Element of Proposed Rule Not Approved'' and include: (1) the Council did not provide any explanation as to why an additional reduction in this sector's harvest of Pacific cod and other target species that would result from a reduction in its halibut and crab PSC is appropriate or consistent with National Standard 4 or other applicable law, (2) the amount of PSC allocated to the AFA trawl CP and the trawl CV sectors is much greater than their historical needs and may create a disincentive for these sectors to minimize their bycatch of prohibited species, which is not consistent with National Standard 9, and (3) the non-AFA trawl CP sector harvests a significant majority of species other than pollock and Pacific cod, and would likely not have PSC remaining from its Pacific cod fishery to use to achieve optimum yield from its other BSAI groundfish fisheries, an inconsistency with National Standard 1.

Description and Estimate of Number of Small Entities to which the Rule will Apply

For purposes of the Regulatory Flexibility Act, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of $4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied and continues to apply SBA's fish harvesting criterion for these businesses because CPs are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4.0 million criterion for fish harvesting operations. NMFS currently is reviewing its small entity size classification for all CPs in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard for CPs. NMFS plans to issue new guidance in the near future.

The FRFA used the most recent year of data available to conduct this analysis (2003). As stated previously, the commercial entities directly regulated by the action are divided into nine sectors for the purpose of (non-CDQ) BSAI Pacific cod allocations, and the CDQ allocation is considered a separate sector. A description of the participants in, and the eligibility requirements for, each non-CDQ sector and a description of the CDQ sector is provided in detail in the RIR.

Vessels that were considered large entities, for purposes of the FRFA, were those with individual annual gross receipts greater than $4.0 million, or those affiliated under owners of multiple vessels, contractual relationships, and/or affiliated through fishing cooperative membership (e.g., AFA) that, when combined with earnings from all such affiliated operations, had aggregate annual gross revenues greater than $4.0 million. Insufficient documentation of multiple and joint-ownership structures, contractual affiliations, interlocking agreements, etc., among vessels in the various fleets of interest, herein, exist with which to confidently estimate the number of directly regulated small (and large) entities. Thus, the FRFA is understood to likely overestimate the actual number of directly regulated small entities subject to this action.

The majority of the CVs in all gear sectors can be considered small entities under a conservative application of the existing threshold criterion. In 2003 only the AFA trawl CVs were considered large entities, as they are known to be party to a harvest cooperative system. The remaining 138 CVs of all gear types appear to meet the criterion for a small entity, as applied by evaluating the 2003 gross revenue data on a per vessel basis. However, as just noted, little is known about the ownership structure of the vessels in the fleets. Thus, based on the best available data, the following vessels appear to meet the application of the criterion above for a small entity in 2003: 25 hook-and-line and pot CVs <60 ft (18.3 m) LOA; 22 non-AFA trawl CVs; 15 jig CVs; 6 hook-and-line CVs ≥60 ft (18.3 m) LOA; and 70 pot CVs ≥60 ft (18.3 m) LOA.

In the CP sector, the available data indicate that fewer than half meet the threshold for a small entity, as applied by evaluating the 2003 gross revenue on a per vessel basis. Thirty-one of the 81 participating vessels in 2003 had gross receipts not in excess of $4.0 million. Again, because little is known about the ownership structure of the vessels in the fleets, it is likely that the FRFA overestimates the number of small entities. Thus, based on the best available data, the following vessels meet the application of the criterion above for a small entity in 2003: 24 hook-and-line CPs; 4 non-AFA trawl CPs; and 3 pot CPs. In sum, of the 310 vessels participating in 2003, 169 vessels are estimated to be small entities directly regulated by the action.

The six CDQ groups participating in the CDQ Program are not-for-profit entities that are not dominant in the

overall BSAI fishing industry. Thus, the six CDQ groups directly regulated by the action are considered small entities or ''small organizations'' under the RFA. Therefore, under a conservative application of the SBA criterion and the best available data, the total number of small entities directly regulated by the action is estimated as 175.

Recordkeeping and Reporting Requirements

This regulation does not impose new recordkeeping or reporting requirements on the directly regulated small entities.

Description of Significant Alternatives

A FRFA should contain ''a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

The FRFA analyzed the ''no action'' alternative (Alternative 1) and the selected action (Alternative 2). Each of these alternatives was comprised of the same set of eight components, or issues. The eight components are discussed in detail in the RIR. Alternative 1 would continue the following: (1) the current overall gear allocations in the BSAI Pacific cod fishery that were established under Amendment 46 in 1997; (2) the current CDQ allocation of 7.5 percent of the BSAI Pacific cod TAC; and (3) the current apportionment of the fixed gear portion of the BSAI Pacific cod non-CDQ TAC established under Amendment 77 in 2004. Alternative 1 also would continue a shared halibut PSC allowance to the BSAI hook-and-line Pacific cod fishery category.

Before the Council made its decisions for Amendment 85, thus forming Alternative 2, it considered several options under each of the eight components. These many options are analyzed in the RIR. The combination of these options resulted in the evaluation of a multitude of potential alternatives. Amendment 85 is thus one derivation of many possible options, reflecting an effort to balance the economic and social objectives for the action against the potential burden placed on directly regulated entities (especially those which are ''small''). One option was selected under each of the eight components to comprise the Council's final preferred alternative, or Alternative 2. Alternative 2 is described in detail in the RIR.

Alternative 2 was selected because it accomplishes the objective of revising allocations of BSAI Pacific cod among various harvest sectors that in general more closely reflect historical use by sector than do current allocations, thus reducing the need for reallocations during the fishing year. Alternative 2 also increases the allocation of Pacific cod to the CDQ Program as required by recent changes in the Magnuson-Stevens Act. The revised allocations will reduce uncertainty about the availability of yearly harvests within sectors that is caused by reallocations, and maintain stability among sectors in the BSAI Pacific cod fishery.

Alternative 1, no regulatory change, would have no direct impact on small entities. However, it also would not have increased the allocation to the <60 ft (18.3 m) LOA fixed gear sector, one of the smallest of the small entities, whose allocation is increased under Alternative 2. Alternative 1 would not revise allocations of BSAI Pacific cod among various harvest sectors that more closely reflect historical use by sector than do current allocations, thus the need for reallocations during the fishing year would not be reduced. Alternative 1 also would not increase the allocation of Pacific cod to the CDQ Program, contrary to new requirements in the Magnuson-Stevens Act. Therefore, Alternative 1 would not meet the objectives of this action and was rejected.

Steps Taken to Minimize the Significant Economic Impact on Small Entities

Several measures are included in the rule that will reduce impacts on small entities. Economic opportunity and stability are facilitated for small entities participating in the Pacific cod fisheries by establishing BSAI Pacific cod allocations for the smallest of the small entities (jig vessels and the <60 ft (18.3 m) LOA hook-and-line and pot CVs) that represent a net increase over their catch history. This provides for potential growth in those sectors. On average during 1995 to 2003, the combined harvest history by these sectors was about 0.5 percent of the retained BSAI Pacific cod harvest. However, in recent years it appears that the <60 ft (18.3 m) LOA fixed gear CV sector has increased its participation in the BSAI Pacific cod fishery and could benefit from additional quota, if it were made available.

The BSAI Pacific cod fisheries are currently managed through a complex series of permits, gear and area endorsements, and licenses. Many are predicated on historical participation and/or performance thresholds (e.g., meeting or exceeding a specific threshold landing in a specific series of seasons, etc.). Many of these requirements result in extremely high entry costs and physical barriers for small vessels and entry level operations. To relieve these burdens and obstacles to participation, an important means of accommodating small entities can be ''exemptions'' from these requirements such as acquiring some specific permits, and/or meeting historical catch and participation thresholds, that are extended to particularly vulnerable or disproportionately burdened classes of smaller vessels. For example, the <60 ft (18.3 m) LOA fixed gear CV sector does not need a valid licence limitation program licence to fish Pacific cod and is not required to have a Pacific cod endorsement. Recognizing the opportunity to facilitate and sustain small entity participation, the Council incorporated a number of exemptions for small entities in the final preferred action. Treatment of these provisions is provided in the RIR.

This final rule maintains the current reallocation process whereby any unused jig quota is first considered for reallocation to the <60 ft (18.3 m) LOA fixed gear CV sector before being reallocated to any other sector. The rule also changes the jig sector seasonal allowance such that 20 percent more of the jig allocation is allowed to be harvested in the first half of the year. Thus, more Pacific cod may potentially be harvested by the <60 ft (18.3 m) LOA fixed gear CV sector earlier in the year, when the weather is preferable for this small boat sector. The rule also specifies that the third trimester of the jig allocation, if it is to be reallocated, should be available to the <60 ft (18.3 m) LOA fixed gear CV sector on or about September 1. The intent of this provision is to reallocate quota between the small boat CV sectors as early in the year as possible, in order for these sectors to have an opportunity to harvest the quota under better weather conditions.

Not approving the proposed regulatory change that would have subdivided among trawl sectors the annual PSC limits apportioned to the Pacific cod trawl gear fisheries, will help minimize the effects of the reduced allocation on the small entities that are members of the non-AFA trawl CP sector by reducing the chance that the non-AFA trawl CP sector's directed fishery for Pacific cod may be closed due to an insufficient PSC allowance.

This action increases the BSAI Pacific cod allocation to the CDQ Program from

7.5 percent of the Pacific cod TAC to 10.7 percent, as mandated by the recent amendments to the Magnuson-Stevens Act. A tradeoff exists in terms of impacts on the small entities in the non-CDQ sectors whose allocations will be reduced (proportionally by 3.2 percent) by the increase to the CDQ Program. However, the action represents a positive effect on the six small entities that comprise the CDQ groups in terms of potential revenues resulting from an increased allocation. This increase in royalty payments is estimated as approximately $1.1 million. Nonetheless, efforts to minimize the burden on the smallest of small entities, as discussed above, by exempting them from the most onerous permit and recency requirements, and by allocating Pacific cod TAC amounts in excess of their recent Pacific cod harvest levels, reflect a sincere effort to address the needs of these small entities.

In sum, many vessels in each sector directly regulated by Alternative 2 are small entities. Because this action is principally designed to reapportion access to the cod resource among current user groups, by definition, it represents tradeoffs (i.e., some small entities could be negatively affected, while others are positively affected). In addition, the six CDQ groups will receive an increased allocation under this action.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.fakr.noaa.gov*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 23, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108 199, 118 Stat. 110.

■ 2. In § 679.2, remove the definition for ''AFA catcher/processor'', revise the definition for ''CDQ reserve'', and add definitions for ''AFA trawl catcher/processor'', ''Hook-and-line catcher/processor'', ''Non-AFA trawl catcher/processor'', and ''Pot catcher/processor'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

AFA trawl catcher/processor means:

(1) For purposes of BS pollock and all BSAI groundfish fisheries other than Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, and yellowfin sole, a catcher/processor that is permitted to harvest BS pollock under § 679.4(l)(2).

(2) For purposes of BSAI Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, and yellowfin sole, a catcher/processor that is permitted to harvest BS pollock and that is listed under § 679.4(l)(2)(i).

* * * * *

CDQ reserve means the amount of each groundfish TAC apportioned under § 679.20, the amount of each catch limit for halibut, or the amount of TAC for crab that has been set aside for purposes of the CDQ Program.

* * * * *

Hook-and-line catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher/processor fishing activity, catcher/processor, Pacific cod, and hook-and-line gear.

* * * * *

Non-AFA trawl catcher/processor means, for purposes of BSAI Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, and yellowfin sole, a catcher/processor vessel using trawl gear and that:

(1) Is not an AFA trawl catcher/processor listed under § 679.4(l)(2)(i);

(2) Is named on a valid LLP license that is endorsed for Bering Sea or Aleutian Islands trawl catcher/processor fishing activity; and

(3) Was used to harvest with trawl gear in the BSAI and process not less than a total of 150 mt of Atka mackerel, flathead sole, Greenland turbot, Pacific cod, Pacific ocean perch, rock sole, or yellowfin sole between January 1, 1997, and December 31, 2002.

* * * * *

Pot catcher/processor means a catcher/processor vessel that is named on a valid LLP license that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for Bering Sea or Aleutian Islands catcher/processor fishing activity, catcher/processor, Pacific cod, and pot gear.

* * * * *

■ 3. In § 679.7, revise paragraph (d)(5) and add paragraph (d)(25) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(5) For a CDQ group, exceed a CDQ or a halibut PSQ.

* * * * *

(25) For a CDQ group, exceed a seasonal allowance of Pacific cod under § 679.20(a)(7)(i)(B).

* * * * *

■ 4. In § 679.20, remove paragraph (b)(1)(iv) and revise the section's introductory text and paragraph (a)(7) to read as follows:

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA or the BSAI.

(a) * * *

(7) *Pacific cod TAC, BSAI*—(i) *CDQ reserve and seasonal allowances.* (A) A total of 10.7 percent of the annual Pacific cod TAC will be allocated to the CDQ Program in the annual harvest specifications required under paragraph (c) of this section. The Pacific cod CDQ allocation will be deducted from the annual Pacific cod TAC before allocations to the non-CDQ sectors are made under paragraph (a)(7)(ii) of this section.

(B) The BSAI Pacific cod CDQ gear allowances by season, as those seasons are specified under § 679.23(e)(5), are as follows:

Gear Type	A season	B season	C season
(*1*) Trawl	60%	20%	20%
(*i*) Trawl CV	70%	10%	20%
(*ii*) Trawl CP	50%	30%	20%
(*2*) Hook-and-line CP and hook-and-line CV ≥60 ft (18.3 m) LOA	60%	40%	no C season
(*3*) Jig	40%	20%	40%
(*4*) All other non-trawl gear	no seasonal allowance	no seasonal allowance	no seasonal allowance

(ii) *Non-CDQ allocations*—(A) *Sector allocations.* The remainder of the BSAI Pacific cod TAC after subtraction of the CDQ reserve for Pacific cod will be allocated to non-CDQ sectors as follows:

Sector	% Allocation
(*1*) Jig vessels	1.4
(*2*) Hook-and-line/pot CV <60 ft (18.3 m) LOA	2
(*3*) Hook-and-line CV ≥60 ft (18.3 m) LOA	0.2
(*4*) Hook-and-line CP	48.7
(*5*) Pot CV ≥60 ft (18.3 m) LOA	8.4
(*6*) Pot CP	1.5
(*7*) AFA trawl CP	2.3
(*8*) Non AFA trawl CP	13.4
(*9*) Trawl CV	22.1

(B) *Incidental catch allowance.* During the annual harvest specifications process set forth at paragraph (c) of this section, the Regional Administrator will specify an amount of Pacific cod that NMFS estimates will be taken as incidental catch in directed fisheries for groundfish other than Pacific cod by the hook-and-line and pot gear sectors. This amount will be the incidental catch allowance and will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the hook-and-line and pot gear sectors before the allocations under paragraph (a)(7)(ii)(A) of this section are made to these sectors.

(iii) *Reallocation among non-CDQ sectors.* If, during a fishing year, the Regional Administrator determines that a non-CDQ sector will be unable to harvest the entire amount of Pacific cod allocated to that sector under paragraph (a)(7)(ii)(A) of this section, the Regional Administrator will reallocate the projected unused amount of Pacific cod to other sectors through notification in the **Federal Register**. Any reallocation decision by the Regional Administrator will take into account the capability of a sector to harvest the reallocated amount of Pacific cod, and the following reallocation hierarchy:

(A) *Catcher vessel sectors.* The Regional Administrator will reallocate projected unharvested amounts of Pacific cod TAC from a catcher vessel sector as follows: first to the jig sector, or to the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector, or to both of these sectors; second, to the greater than or equal to 60 ft (18.3 m) LOA hook-and-line or to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sectors; and third to the trawl catcher vessel sector. If the Regional Administrator determines that a projected unharvested amount from the jig sector allocation, the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector allocation, or the greater than or equal to 60 ft (18.3 m) LOA hook-and-line catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the hook-and-line catcher/processor sector. If the Regional Administrator determines that a projected unharvested amount from a greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the pot catcher/processor sector in accordance with the hierarchy set forth in paragraph (a)(7)(iii)(C) of this section. If the Regional Administrator determines that a projected unharvested amount from a trawl catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the other trawl sectors in accordance with the hierarchy set forth in paragraph (a)(7)(iii)(B) of this section.

(B) *Trawl gear sectors.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from a trawl sector (trawl catcher vessel, AFA trawl catcher/processor, and non-AFA trawl catcher/processor sectors) to other trawl sectors before unharvested amounts are reallocated and apportioned to specified gear sectors as follows:

(*1*) 83.1 percent to the hook-and-line catcher/processor sector,

(*2*) 2.6 percent to the pot catcher/processor sector, and

(*3*) 14.3 percent to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector.

(C) *Pot gear sectors.* The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from the pot catcher/processor sector to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector, and from the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector to the pot catcher/processor sector before reallocating it to the hook-and-line catcher/processor sector.

(iv) *Non-CDQ seasonal allowances*—(A) *Seasonal allowances by sector.* The BSAI Pacific cod sector allowances are apportioned by season, as those seasons are specified at § 679.23(e)(5), as follows:

Sector	Seasonal Allowances		
	A season	B season	C season
(*1*) Trawl			

Sector	Seasonal Allowances		
	A season	B season	C season
(*i*) Trawl CV	74 %	11 %	15 %
(*ii*) Trawl CP	75 %	25 %	0 %
(*2*) Hook-and-line CP, hook-and-line CV ≥60 ft (18.3 m) LOA, and pot gear vessels ≥60 ft (18.3 m) LOA	51 %	49 %	no C season
(*3*) Jig vessels	60 %	20 %	20 %
(*4*) All other nontrawl vessels	no seasonal allowance	no seasonal allowance	no seasonal allowance

(B) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod from any sector except the jig sector will be reallocated to that sector's next season during the current fishing year unless the Regional Administrator makes a determination under paragraph (a)(7)(iii) of this section that the sector will be unable to harvest its allocation.

(C) *Jig sector.* The Regional Administrator will reallocate any projected unused portion of a seasonal allowance of Pacific cod for the jig sector under this section to the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector. The Regional Administrator will reallocate the projected unused portion of the jig sector's C season allowance on or about September 1 of each year.

* * * * *

■ 5. In § 679.21, remove paragraph (e)(1)(i), redesignate paragraphs (e)(1)(ii) through (e)(1)(ix) as (e)(1)(i) through (e)(1)(viii), and revise paragraphs (e)(2), (e)(3)(i), (e)(3)(v), and (e)(4), to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(2) *Nontrawl gear, halibut.* The PSC limit of halibut caught while conducting any nontrawl fishery for groundfish in the BSAI during any fishing year is the amount of halibut equivalent to 900 mt of halibut mortality.

(3) * * *

(i) *General.* (A) An amount equivalent to 7.5 percent of each PSC limit set forth in paragraphs (e)(1)(i) through (iv) and paragraphs (e)(1)(vi) through (viii) of this section is allocated to the groundfish CDQ Program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(B) NMFS, after consultation with the Council and after subtraction of the PSQ reserve, will apportion each PSC limit set forth in paragraphs (e)(1)(i) through (vii) of this section into bycatch allowances for the fishery categories defined in paragraph (e)(3)(iv) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits.

* * * * *

(v) *AFA prohibited species catch limitations.* Halibut and crab PSC limits for the AFA trawl catcher/processor sector and the AFA trawl catcher vessel sector will be established according to the procedures and formulas set out in § 679.64(a) and (b) and managed through directed fishing closures for the AFA trawl catcher/processor sector and the AFA trawl catcher vessel sector in the groundfish fisheries for which the PSC limit applies.

(4) *Halibut apportionment to nontrawl fishery categories*—(i) *General.* (A) An amount equivalent to 7.5 percent of the nontrawl gear halibut PSC limit set forth in paragraph (e)(2) of this section is allocated to the groundfish CDQ Program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

(B) NMFS, after consultation with the Council and after subtraction of the PSQ reserve, will apportion the halibut PSC limit for nontrawl gear set forth under paragraph (e)(2) of this section into bycatch allowances for the nontrawl fishery categories defined under paragraph (e)(4)(ii) of this section.

(C) Apportionment of the nontrawl halibut PSC limit among the nontrawl fishery categories will be based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the nontrawl halibut PSC limit.

(D) The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

(ii) *Nontrawl fishery categories.* For purposes of apportioning the nontrawl halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those BSAI groundfish species for which a TAC has been specified under § 679.20.

(A) *Pacific cod hook-and-line catcher vessel fishery.* Catcher vessels fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(B) *Pacific cod hook-and-line catcher/processor fishery.* Catcher/processors fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of Pacific cod that is greater than the retained amount of any other groundfish species.

(C) *Sablefish hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of sablefish that is greater than the retained amount of any other groundfish species.

(D) *Groundfish jig gear fishery.* Fishing with jig gear during any weekly reporting period that results in a retained catch of groundfish.

(E) *Groundfish pot gear fishery.* Fishing with pot gear under restrictions set forth in § 679.24(b) during any weekly reporting period that results in a retained catch of groundfish.

(F) *Other nontrawl fisheries.* Fishing for groundfish with nontrawl gear during any weekly reporting period that results in a retained catch of groundfish and does not qualify as a Pacific cod hook-and-line catcher vessel fishery, a Pacific cod hook-and-line catcher/processor fishery, a sablefish hook-and-line fishery, a jig gear fishery, or a groundfish pot gear fishery as defined under this paragraph (e)(4)(ii).

* * * * *

§ 679.23 [Amended]

■ 6. In § 679.23, remove paragraphs (e)(6) and (e)(7).

■ 7. In § 679.64:

A. Remove paragraph (a)(1) introductory text.

B. Redesignate paragraph (a)(1)(i) as paragraph (a)(1) introductory text.

C. Redesignate paragraph (a)(2) introductory text as paragraph (a)(1)(i).

D. Redesignate paragraphs (a)(2)(i) and (ii) as paragraphs (a)(1)(i)(A) and(B), respectively.

E. Redesignate paragraph (a)(3) introductory text as paragraph (a)(1)(ii).

F. Redesignate paragraphs (a)(3)(i) through (iii) as paragraphs (a)(1)(ii)(A) through (C), respectively.

G. Redesignate paragraph (a)(4) introductory text as paragraph (a)(1)(iii).

H. Redesignate paragraphs (a)(4)(i) and (ii) as paragraphs (a)(1)(iii)(A) and (B), respectively.

I. Redesignate paragraph (a)(5) as paragraph (a)(2).

J. Redesignate paragraph (a)(6) as paragraph (a)(3), and

K. Revise newly redesignated paragraphs (a)(1) introductory text and (a)(3).

The revisions read as follows:

§ 679.64 Harvesting sideboards limits in other fisheries.

(a) * * *

(1) *How will groundfish sideboard limits for AFA listed catcher/processors be calculated?* Except for Aleutian Islands pollock and BSAI Pacific cod, the Regional Administrator will establish annual AFA catcher/processor harvest limits for each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI as follows:

* * * * *

(3) *How will AFA catcher/processor sideboard limits be managed?* The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§ 679.20(d)(1)(iv) and 679.21(e)(3)(v).

* * * * *

§§ 679.20, 679.21, 679.31, 679.32, 679.50, and 679.64 [Amended]

■ 8. In the table below, for each of the paragraphs shown under the ''Paragraph'' column, remove the phrase indicated under the ''Remove'' column and replace it with the phrase indicated under the ''Add'' column for the number of times indicated in the ''Frequency'' column.

Paragraph(s)	Remove	Add	Frequency
§ 679.20(b)(1)(i)	except pollock and the	except pollock, Pacific cod, and the	2
Newly redesignated § 679.21(e)(1)(i) introductory text	paragraphs (e)(1)(iii)(A) through	paragraphs (e)(1)(i)(A) through	1
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§ 679.21(e)(7)(viii)(A) introductory text	paragraph (e)(1)(vii) of	paragraph (e)(1)(vi) of	1
§ 679.21(e)(7)(viii)(B) introductory text	paragraph (e)(1)(ix) of	paragraph (e)(1)(viii) of	1
§ 679.31(c)	(See § 679.20(b)(1)(iii))	(See § 679.20(a)(7)(i) and (b)(1)(iii).)	1
§ 679.31(e)	(See § 679.21(e)(1)(i) and (e)(2)(ii)).	(See § 679.21(e)(3)(i)(A) and (e)(4)(i)(A).)	1
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Newly redesignated § 679.64(a)(1)(i)(B)	paragraph (a)(2)(i) of	paragraph (a)(1)(i)(A) of	1
Newly redesignated § 679.64(a)(1)(iii)(A)	paragraphs (a)(1)(ii) through (a)(3) of	paragraphs (a)(1)(i) through (a)(1)(ii) of	1
Newly redesignated § 679.64(a)(1)(iii)(B)	paragraph (a)(4)(i) of	paragraph (a)(1)(iii)(A) of	1

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Part V

Department of Transportation

Federal Railroad Administration

49 CFR Parts 229, 232, and 238
Electronically Controlled Pneumatic Brake System; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 232, and 238

[Docket No. FRA–2006–26175, Notice No. 1]

RIN 2130–AB84

Electronically Controlled Pneumatic Brake Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes revisions to the regulations governing freight power brakes and equipment by adding a new subpart addressing electronically controlled pneumatic (ECP) brake systems. The proposed regulations are designed to provide for and encourage the safe implementation and use of ECP brake system technologies. The proposal contains specific requirements relating to design, interoperability, training, inspection, testing, handling defective equipment, and periodic maintenance related to ECP brake systems. The document also identifies provisions of the existing regulations and statutes where FRA is proposing to provide flexibility to facilitate the introduction of this advanced brake system technology.

DATES: (1) Written comments must be received by November 5, 2007. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA will hold an oral public hearing on a date to be announced in a forthcoming notice.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2006–26175, may be submitted by any of the following methods:

- *Web site:* Until September 28, 2007, comments should be filed at *http://dms.dot.gov*. After September 28, 2007, comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. At each site, follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* until September 28, 2007, to *http://www.regulations.gov* after September 28, 2007, or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Wilson, Office of Safety Assurance and Compliance, Motive Power and Equipment Division, RRS–14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6259); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6032).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Background
II. Conventional Brake Operations
III. ECP Brake Operations
IV. Interoperability
V. Advantages of ECP Brakes Over Conventional Pneumatic Brakes
  A. Simultaneous Brake Application
  B. Continuous Brake Pipe Charging
  C. Graduated Brake Application and Release
  D. Train Management
  E. Improved Performance
VI. Standards, Approval, and Testing
  A. AAR Standards and Approval Process
  B. FMECA
VII. Market Maturity and Implementation
VIII. Related Proceeding
IX. Legal Impediments and Proposed Relief
X. Additional Issues
  A. Part 229
  B. Dynamic Brake Requirements
  C. Single Car Air Brake Test Approval Procedures and Single Car Air Brake Tests
  D. Train Handling Information
  E. Piston Travel Limits
  F. Extended Haul Trains
  G. Part 238
XI. Section-by-Section Analysis
XII. Regulatory Impact and Notices
  A. Executive Order 12866 and DOT Regulatory Policies and Procedures
  B. Regulatory Flexibility Act and Executive Order 13272
  C. Paperwork Reduction Act
  D. Federalism Implications
  E. Environmental Impact
  F. Unfunded Mandates Reform Act of 1995
  G. Energy Impact
  H. Privacy Act

I. Background

Since the inception of automatic air brakes by George Westinghouse in the 1870s, brake signal propagation has been limited by the nature of air and the speed of sound. Other adjustments have sought to alleviate this deficiency, but have left the basic system unaltered. As early as 1990, the Association of American Railroads (AAR) has investigated more advanced braking concepts for freight railroads, including ECP brake systems, which promise to radically improve brake propagation by using electrical transmissions of the braking signal through the train while still using air pressure in the cylinder to apply the force of the brake shoe. During the past 15 years, ECP brake technology has progressed rapidly and has been field tested and used on various railroads' revenue trains.

FRA has been an active and consistent advocate of ECP brake system implementation. In 1997, FRA participated in an AAR initiative to develop ECP brake standards and in 1999, FRA funded, through Transportation Technology Center, Inc., a Failure Modes, Effects, and Criticality Analysis (FMECA) of ECP brake systems based on the AAR standards. FRA also took part in programs to develop and enhance advanced components for ECP brake systems.

To assess the benefits and costs of ECP brakes for the U.S. rail freight industry, FRA contracted Booz Allen Hamilton (BAH) in 2005 to conduct a study. BAH engaged an expert panel consisting of principle stakeholders in ECP brake technology conversion to participate in the study. The expert panel made various conclusions relating to technological standards, safety, and efficiency. In addition, the final BAH report provided a comprehensive analysis and comparison of ECP and conventional air brake systems. On August 17, 2006, FRA announced in a press release its intention to issue a notice of proposed rulemaking to revise the federal brake safety standards to encourage railroads to invest in and deploy ECP brake technology. In the press release, FRA encouraged railroads to submit ECP brake plans before the proposed rule changes are completed.

In a petition dated November 15, 2006, and filed November 21, 2006, two railroads—the BNSF Railway Company (BNSF) and the Norfolk Southern Corporation (NS)—jointly requested that FRA waive various sections in parts 229 and 232 as it relates to those railroads' operation of ECP brake pilot trains. *See* Docket No. FRA–2006–26435. FRA held a fact-finding hearing on this matter on January 16, 2007, featuring testimony from representatives of the petitioners, air brake manufacturers, and labor unions and issued a conditional waiver on March 21, 2007. *See id.* In drafting this proceeding's proposed rules, FRA has considered information filed and decisions made in the related, but separate, proceeding concerning the petition for waiver filed by BNSF and NS.

II. Conventional Brake Operations

While the basic operational concept of the automatic air brake system, originally conceived by George Westinghouse in the 1870s, remains the same, it has seen continuous improvement in practice. An air compressor in the locomotive charges a main reservoir to about 140 pounds per square inch (psi). With controls located in the locomotive, the locomotive engineer uses the main reservoir to charge the brake pipe—a 1¼ inch diameter pipe—that runs the length of the train and is connected between cars with hoses. The brake pipe's compressed air—used as the communication medium to signal brake operations and the power source for braking action—then charges each car's two-compartment reservoir to a pressure of 90 psi. Braking occurs through a reduction of air pressure in the brake pipe, which signals the valves on each car to direct compressed air from the reservoir on each car to its respective brake cylinder for an application of brakes. When air pressure is supplied to the brake cylinder—which is connected to a series of rods and levers that apply and release the brakes—the resulting force presses the brake shoes against the wheel, slowing the car's speed.

While brake applications were initially directed by George Westinghouse's triple valve, modern applications direct a control valve, which directs air from the brake pipe into the air reservoir when air pressure is rising in the brake pipe in order to charge the auxiliary and emergency reservoir and be ready for a brake application. To perform a brake application, the locomotive automatic brake valve reduces pressure in the brake pipe by exhausting air, causing the car's control valve to direct air from the auxiliary reservoir into the brake cylinder. The increase in pressure to the brake cylinder is approximately proportional to the drop in brake pipe pressure. A 26 psi reduction in brake pipe pressure is equal to a full service brake application on a fully charged brake pipe, and should result in a brake cylinder pressure adequate to achieve a full service braking effort (brake force). While the control valve is directing air into the brake cylinder, or holding air in the brake cylinder, it is unable to recharge the auxiliary reservoir on each car. The engineer can apply the brakes in increments, at few psi at a time, go directly to a full service application of 26 psi reduction, or initiate an emergency application of the brakes, as explained below.

Unlike a brake application, the incremental release of brakes on a freight train cannot be accomplished. Brakes can only be fully released, called a direct release, and the auxiliary reservoirs then begin to charge. Brake applications are possible, but are more complicated, from undercharged brake pipe and reservoirs. Recharging takes more time for a longer train, because the air has to be sent down the length of the train's brake pipe—which can be up to a mile and a half. In addition, on extremely long trains, the brake pipe pressure on the last car may not reach 90 psi due to small leaks throughout the brake pipe, and there may be problems getting enough brake pipe pressure to fully release the brakes during cold weather.

Brake pipe pressure is measured by an end-of-train (EOT) device, which is electrically and pneumatically connected to the rear of a train equipped with conventional pneumatic brakes and sends signals (EOT Beacon) via radio indicating the brake pipe pressure to the lead locomotive. Current Federal regulations specify the design and performance standards for both one-way and two-way EOT devices. *See* Part 232, subpart E. Both EOT device designs comprise of a rear unit pneumatically connected to the rear of the train's last car that an EOT Beacon to a Head End Unit (HEU)—a brake system control device mounted within the locomotive and used to control the ECP brake system by the locomotive engineer and containing the fail-safe software for certain undesirable conditions. One-way EOT devices can transmit information from the rear unit to the HEU. At a minimum, the one-way device must transmit the brake pipe pressure to the HEU and display the reading to the locomotive engineer. Two-way EOT devices transmit and receive information from both the rear end unit and the HEU.

An emergency brake application can be initiated in several ways. The locomotive engineer can initiate the application by moving the brake handle to the emergency position, which exhausts air from the locomotive end at a faster rate than the service application. Emergency brake applications can also be initiated by opening the conductor's valve, located in the cab of the locomotive, or by a break-in-two, where the train separates between cars and the brake pipe hoses separate, exhausting brake pipe pressure. While performing an emergency brake application from the locomotive, a locomotive engineer can also use a two-way EOT to initiate an emergency brake application at the rear of the train. This permits the emergency application to be simultaneously initiated from both the front and rear of the trains and ensures that the brakes on the cars at the rear of the train apply in the event a brake pipe blockage occurs.

III. ECP Brake Operations

As early as 1990, AAR began investigating a more advanced braking concept for freight railroads, the ECP brake system. The ECP brake system radically improves the operation of the automatic air brake by using electrical transmissions to signal the application and release of brakes on each car in a train while still using compressed air to apply the force of the brake shoe against the wheel. ECP brakes also greatly simplify the brake system by eliminating multiple pneumatic valves used by conventional brakes and replacing them with a printed circuit board with microprocessor, one electrically activated application valve, and one electrically activated release valve, with feedback on brake cylinder pressure for control.

ECP brake technology requires equipping locomotives and cars with special valves and equipment that are unique to the operation of ECP brakes. While this system still requires a brake pipe to supply compressed air from the locomotive to each car's reservoir in a train, there are currently two known methods to send the electronic signal for ECP brake operations from the locomotive to each car in the train. These methods include using a hard wire electrical cable running the length of the train or a radio-based technology requiring a transmitter and a receiver installed on the cars and locomotives. At this time, it appears that the railroad industry has chosen to use a cable-based system for ECP brake operation. Therefore, the proposed rules will be

limited to operations involving cable-based ECP brake systems.

ECP brake systems still employ the automatic air brake system's basic concept where the locomotive supplies compressed air to each car's reservoir via the conventional brake pipe. Each car's brake valve reacts to a signal to apply the brakes by directing compressed air from the reservoir to the brake cylinder or to release the brakes by releasing air from the brake cylinder. The similarities between the conventional pneumatic and ECP brake systems end here. Instead of utilizing reductions and increases of the brake pipe pressure to convey application and release signals to each car in the train, ECP brake technology uses electronic signals, resulting in an almost instantaneous application and release of brakes on each car in the entire train. Since the brake pipe pressure no longer serves as the communication medium in ECP braked trains, the brake pipe is constantly supplied or charged with compressed air from the locomotive regardless of whether the brakes are applied or released. In addition, ECP brake equipped trains offer graduated release, where a partial brake release command provides a partial, proportional brake release.

The basic ECP brake system is controlled from the HEU and each car is equipped with a Car Control Device (CCD), an electronic control device that replaces the function of the conventional pneumatic service and emergency portions during electronic braking. The CCD acknowledges and interprets the electronic signals from the HEU and controls the car's service and emergency braking functions and brake releases. The CCD also controls reservoir charging and sends a warning signal to the locomotive in the event any component fails to appropriately respond to a braking command. Each CCD has a unique electronic address located in the Car ID Module, which is keyed to a car's reporting mark and number.

Each car connects to the locomotive via special connectors and junction boxes. More specifically, an ECP brake equipped train's train line cable—a two-conductor electric cable (#8 A–WG and a shield)—connects the locomotive and cars and carries train line power to operate all CCDs and ECP brake system's end-of-train (ECP–EOT) device and communicates network signals via the power voltage. A Power Supply Controller (PSC)—mounted within the locomotive and providing 230 VDC of electricity—interfaces with the train line cable's communication network, provides power to all connected CCDs and ECP–EOT devices, and controls the train line power supply as commanded by the HEU. Under the AAR standards, a single power supply shall be capable of supplying power to an ECP brake equipped train consisting of at least 160 CCDs and an ECP–EOT device.

Under the existing regulations, the conventional pneumatic brake system's EOT device can lose communication for 16 minutes and 30 seconds before the locomotive engineer is alerted. *See* 49 CFR 232.407(g). After the message is displayed, the engineer must restrict the speed of the train to 30 mph or stop the train if a defined heavy grade is involved. Per the regulations, railroads must calibrate each conventional two-way EOT devices every 365 days and would likely incur additional maintenance and cost expenses while replacing its batteries. Further, a conventional EOT device is heavy and presents a potential for personal injury when applied to the rear of the train.

By contrast, an ECP–EOT device uniquely monitors both brake pipe pressure and operating voltages and sends an EOT Beacon every second from its rear unit to its HEU on the controlling locomotive. The HEU will initiate a full service brake application should brake pipe pressure fall below 50 psi or an emergency brake application should a communication loss occur for five consecutive seconds or the electrical connection break. An ECP–EOT device may not require calibration and its battery, only a back-up for the computer, is charged by the train line cable and is much lighter in weight than the conventional EOT device battery. Physically the last network node in the train, the ECP–EOT device also contains an electronic train line cable circuit—a 50 ohm resistor in series with 0.47 micro-farad capacitor—and must be connected to the network and transmit status messages to the HEU before the train line cable can be powered continuously.

ECP brake systems have a great advantage of real-time monitoring the brake system's health. In normal operation, the HEU transmits a message/status down the train line cable to each car. If an individual car's brakes do not respond properly to the HEU's brake command, or if air pressures are not within the specified limits for operation, a message indicating the problem and the applicable car number is sent back to the HEU, which in turn notifies the locomotive engineer. The ECP brake system can identify various faults, including, but not limited to: low brake pipe pressure; low reservoir pressure; low train line cable voltage; low battery charge; incorrect brake cylinder pressure; and offline or cut out CCDs.

Emergency or full service brake applications—enabled by compressed air propagating pneumatic pressure signals through the brake pipe—automatically occur when the ECP brake system software detects certain faults. For instance, if the HEU detects that the percentage of operative brakes falls below 85 percent, a full service brake application will automatically occur. In addition, the brakes will automatically apply when the following occurs: (1) Two CCDs or the ECP–EOT report a ''Critical Loss'' within 5 seconds; (2) the train line cable indicates low voltage with less than 90 percent operative brakes; (3) the ECP–EOT reports a low battery charge; (4) the train moves during set-up; (5) the train line cable becomes disconnected; or (6) the train exceeds 20 mph in Switch Mode. Under the AAR standards, the ECP brake system shall also have a pneumatic back-up system on each car for an emergency brake application in the event of a vented brake pipe or a train separation. These features preserve the fail safe feature of conventional pneumatic brake systems.

IV. Interoperability

Due to control methodology differences, ECP brake systems are not functionally compatible with conventional pneumatic air brake systems. For instance, while conventional pneumatic air brake systems command a brake application by reducing the air pressure in the brake pipe, ECP brake systems command a brake application through a digital communications link transmitted on the electrical train line cable. Further, conventional freight cars are not equipped with an electrical train line cable and must depend on the pneumatic brake pipe for the brake command.

Manufacturers have developed application strategies to address issues relating to car and locomotive fleet interchangeability. In particular, they have proposed three major schemes of ECP brake design: stand-alone systems using only ECP brakes; overlay (dual mode) systems capable of operating in either conventional or ECP brake mode; and emulation systems, also capable of operating in either conventional or ECP brake mode.

Since cars with stand-alone ECP brake systems do not include a fully pneumatic brake control valve, they are incompatible with conventionally braked cars and must be operated in complete ECP brake equipped train sets. Stand-alone ECP brake systems cannot

intermix in the same train with conventional pneumatic braked cars unless those cars are transported as cars with inoperative brakes. While the stand-alone ECP brake system is the least expensive alternative of the three design types, its incompatibility with conventional pneumatic brake systems requires train segregation, potentially posing significant operational problems until the entire car fleet is converted to ECP brakes.

Overlay configurations—cars equipped with both ECP CCDs and conventional pneumatic control valve portions—allow cars to operate with either ECP or conventional pneumatic air brakes. To operate in ECP brake mode, compatible ECP equipment must be installed on the locomotive as well as on the freight car. While an overlay system's dual mode capability provides significant flexibility, railroad operators must purchase, install, and maintain equipment to support both types of brake systems for as long as dual mode capability is required.

Emulation configurations use a CCD capable of operating in either ECP or conventional mode without requiring conventional pneumatic controls. One manufacturer has provided an emulation ECP brake valve that monitors both the digital communications cable and the brake pipe for a brake command. If an electrical signal is present, the ECP brake valve operates in ECP brake mode. If the electrical brake command signal is not present, then the valve will monitor the changes in the brake pipe pressure like a conventional pneumatic control valve and the CCD will use a software program to emulate the function and response of a conventional pneumatic valve. This mode is called limited emulation and is meant to be used for small cuts of cars hauled short distances at slow speeds with a non-ECP brake equipped locomotive. An emulation ECP brake system can be operated in any train with any mix of emulation ECP and conventional brake systems. In a mixed train, the emulation ECP brake system will monitor the brake pipe for pressure changes and set up brake cylinder pressure like a conventional pneumatic valve. Currently, FRA does not propose any rules uniquely regulating trains or cars equipped with emulation ECP brake systems. However, FRA seeks comments on whether or how it should regulate such systems differently than what is proposed herein.

Manufacturers have also addressed ECP brake compatibility with conventional pneumatic brake equipped locomotives, which must be equipped with a HEU unit to operate the brakes on ECP brake equipped cars. For instance, one manufacturer has developed a portable unit that will allow a non-ECP brake equipped locomotive to operate an ECP brake equipped train by converting the air pressure changes in the brake pipe to digital command signals that are transmitted to the freight cars through the electrical train line cable. The locomotive engineer operates the brakes with the conventional automatic brake valve in the control cab. The brakes, however, will respond instantaneously and provide all of the benefits of an ECP brake system.

V. Advantages of ECP Brakes Over Conventional Pneumatic Brakes

ECP brake technology overcomes many of the physical limitations inherent in conventional pneumatic brake technology. Field testing of AAR compliant ECP brake systems over the past decade has not revealed any indication of a catastrophic event that could be caused by an ECP brake system malfunctioning. With a high level of confidence, the ECP brake stake holders support the implementation of ECP brake systems on the Nation's railroads. FRA concludes that the advantages of ECP brake technology will significantly improve the safety and the performance of train operations. Examples of such benefits include better train handling through simultaneous brake applications, continuous brake pipe charging, and graduated brake operation. ECP brake benefits also include electronic train management and improved performance.

A. Simultaneous Brake Application

The conventional pneumatic brake system uses compressed air as the source for braking power and as the medium for communicating brake application and release commands and communicates brake commands by changing brake pipe pressure through the use of the locomotive automatic brake control valve. These commands begin at the front of the train and propagate to the rear of the train at the speed of the air pressure moving from car to car. This slow propagation of the brake command contributes to uneven braking, excessive in-train and run-in forces, train handling challenges, longer stopping distances, safety risks of prematurely depleting air brake reservoirs, and a corresponding low brake rate until all cars in the train receive and fully respond to the brake command. FRA recognizes that the slow application and release of brakes in a train causes excessive in-train forces, which have the potential to cause derailments when they occur in curves, cross-overs, or when heavier cars are placed at the rear of the train. When the brakes on the rear of the train release much more slowly than the brakes on the front of the train, the potential for a ''string-line'' derailment—where the train stretches out until one or more wheels are lifted off the inside of a curve—increases.

The ECP brake system reduces these problems by enabling cars to brake simultaneously at the command of an electronic signal. The electronic signal's speed ensures an instantaneous, simultaneous, and even activation of each car's brake valves, significantly reducing braking distances—40 to 60 percent for the longest trains—and minimizing the consequences of collisions or derailments by reducing the collision speed and slowing the non-derailed portion of the train.

B. Continuous Brake Pipe Charging

Propagating a brake command signal through the induction or reduction of air pressure in the brake pipe represents a significant limitation of conventional pneumatic brakes. The same brake pipe air used to propagate brake commands also charges reservoirs on each freight car. As a result, the brake pipe must be fully charged to restore full braking capacity to depleted reservoirs. Partially depleted air from the brake pipe, which occurs during the initial stage of braking, prohibits repeat applications of brakes until the brake pipe can be recharged. A brake pipe can only be recharged once the brakes have been fully released. This characteristic of conventional pneumatic brakes contributes to the risk of run-away trains caused by prematurely depleted brake pipe pressure, particularly on steep grades.

The ECP brake system reduces this risk by continuously charging the brake pipe. Since ECP brakes do not use the brake pipe as a brake command medium, the brake pipe is constantly being charged, allowing the locomotive engineer to operate the brake system more aggressively. With ECP brake systems, it is unnecessary to apply hand brakes on steep grades to recharge the brake pipe after the train stops on the grade.

C. Graduated Brake Application and Release

The conventional pneumatic brake system's inability to operate freight trains in graduated release has long hampered train operations and has increased fuel consumption. The conventional pneumatic brake system

can only operate in direct release, preventing locomotive engineers from reducing the braking effort without completely releasing and resetting the brakes. In other words, after a direct release brake application with a conventional pneumatic brake system, braking effort can be increased but not decreased without fully releasing the brakes. In many cases, direct release leads to unnecessary train stops and insufficient initial brake applications. ECP brake systems overcome this deficiency by operating in graduated release, which enables the operator to reduce braking effort to a lower level after making an initial brake application without fully releasing the brakes. As a result, the operator can accurately adjust the braking level as each situation requires, eliminating the stops required to recharge and reset the brakes after excessive brake applications and prior to negotiating hills and valleys.

D. Train Management

The use of a train line cable allows real-time self-diagnostic functions to be incorporated in the brake system. The initial check of brake system conditions on each car and continuous monitoring of each car's braking functions provides immediate communication to the locomotive engineer of certain brake failures. The continuous monitoring of each car's braking functions and real-time diagnostics of the train's brake system is a significant advantage to the locomotive engineer for the operation of the train and provides justification to eliminate the need for some of the required physical inspections of the train and supports regulatory change to operate cars with non-functioning brakes out of the initial terminal. When the ECP brake system diagnostics detect a serious problem, including when the brake pipe pressure falls below 50 psi, the ECP brake system will automatically command a penalty brake application. ECP brake systems also eliminate the conventional pneumatic brake system's inability to apply all brakes in the train when there is a blockage in a brake pipe, which is handled through the use of a two-way EOT telemetry device not required by all trains. This failure will not affect brake applications in ECP brake systems, because each car is provided a braking command through a train line cable, not solely through the reduction of brake pipe pressure, which would not be propagated through the consist if the brake pipe is blocked. Therefore, ECP brake systems incorporate features that make them inherently safer than conventional pneumatic brakes. Using sensor-based technology to maintain a continuous feedback loop on train conditions for the crew and any centralized monitoring, the electrical communication cable network can also serve as a platform for the gradual addition of other train performance monitoring and management controls, including distributed power locomotive control, automatic activation of hand brakes, hot bearing detection, and truck oscillation and vibration. These and other train management features will increase the reliability and overall safety of train operations.

E. Improved Performance

Ultimately, ECP brake technology also provides improved performance, which will contribute to safer train operations and significant cost savings over time. Since ECP brake operated trains can operate in graduated release, instead of direct release, of the brakes, fuel will not be wasted while dragging trains against a brake application. Further, because all of the cars' ECP brakes release instantaneously, fuel will not be wasted on initial start-ups and power-ups after a brake application.

Operations utilizing ECP brake systems also promise increased average train speeds and decreased trip times. ECP brake systems allow the locomotive engineer to modulate the brake applications in territories with descending grades, thus increasing overall trip average speeds and reaching destinations sooner. While the slow release of the rear cars' brakes on conventional pneumatic braked trains cause drag, the brakes on ECP brake equipped trains release simultaneously, improving start-up and acceleration times. Further, due to its shorter stopping distances, trains equipped solely with ECP brake systems may potentially permit higher train speeds within existing signal spacing, which will increase average system velocity, or permit use of shorter ''blocks'' between signals, facilitating greater system capacity.

The instantaneous application and release of ECP brakes will result in more uniform braking, thus improving wheel wear and lengthening brake shoe life. In a conventional pneumatically braked train, the brake pipe gradient and slower response time causes the first third of the train's cars to provide the majority of the braking action, thus applying additional pressure and heat on those cars' wheels. Since ECP brake systems provide instantaneous braking on all cars, such pressure will be more uniformly distributed along the train, thus eliminating the uneven braking force on the wheels of those leading cars. The ECP brake system also self-monitors each car's brake cylinder pressure and maintains the prescribed pressure, thus reducing the potential for creating shelling and flat spots on wheels.

Due to minimized wheel defects, and their accompanying vibrations, freight cars and brake components will enjoy increased life. Further, instantaneous braking will also prevent draft gear assemblies from receiving the constant pressure caused by trains equipped with conventional pneumatic brake systems and will reduce lading damage by eliminating slack action and in-train forces caused by uneven braking. ECP brake systems will also reduce the number of brake parts and rubber diaphragms required by conventional pneumatic brake systems.

VI. Standards, Approval, and Testing

During the past 17 years, FRA has monitored the progression of ECP brake technology and has observed field testing on various revenue trains, both freight and passenger. In 1997, FRA participated in an AAR initiative to develop ECP brake standards and in 1999, FRA funded, through the Transportation Technology Center, Inc., an FMECA of the ECP brake system based on AAR's Standards and Recommended Practices, S–4200 Series. FRA also participated in programs to develop and enhance advanced components for ECP brake systems. After all of these efforts, FRA has decided that the AAR S–4200 Series of standards is appropriate substantively and legally for adoption by reference in this rule and that the AAR Air Brake Systems Committee is an appropriate vehicle to rely upon in the implementation of ECP brake technology and this rule.

FRA acknowledges that ECP brakes are an attractive, viable, and enabling technology with the potential to substantially improve the operational efficiency of trains and that by complying with AAR Standard S–4200, ECP-braked trains offer significant safety and efficiency benefits in freight train handling, car maintenance, fuel savings, network capacity, self-monitoring, and fail-safe operation. FRA proposes that all suppliers obtain AAR approval for ECP brake-equipped-trains intended for use on U.S. railroads.

AAR administers the existing industry ECP brake standards through its Air Brake Systems Committee—consisting of representatives from the major railroads, brake manufacturers, and FRA—which requires demonstrated proof of compatibility, safety, and reliability of air brake systems to receive AAR approval. FRA is satisfied that the

existing AAR S–4200 specifications, AAR approval procedures, and continuing oversight by the AAR Air Brake Systems Committee will best ensure the safety and reliability of ECP brake systems. An ECP brake monitoring system complying with AAR Standard S–4200 Series increases safety by communicating information on the location and quantity of defective equipment and by providing for the safe movement of equipment over longer distances and periods of time.

A. AAR Standards and Approval Process

In order to assure the safety and the interoperability of ECP brake system designs, AAR developed the S–4200 Series of standards. The first five standards (S–4200, S–4210, S–4220, S–4230, and S–4250)—issued in 1999 and updated in 2002 and 2004—specify the functional, operational, and interface requirements for cable-based ECP brake systems. AAR issued two additional standards in January 2007, specifying ECP brake equipment approval procedures (S–4240) and interoperability testing requirements (S–4260). AAR has not completed specifications for radio-based ECP brakes, which it considers technically immature and unsuitable. The purposes of the standards are to ensure that AAR-approved electronic brake systems are interoperable between different manufacturers and meet high standards of safety and reliability. The analysis of the S–4200 Series of standards indicates that the performance specifications for the cable-based ECP brake concept are complete.

The AAR Manual of Standards and Recommended Practices (MSRP) contains the following standards for cable-based ECP brake systems:

- S–4200, ECP Cable-Based Brake Systems—Performance Requirements;
- S–4210, ECP Cable-Based Brake System Cable, Connectors, and Junctions Boxes—Performance Specifications;
- S–4220, ECP Cable-Based Brake DC Power Supply—Performance Specification;
- S–4230, Intratrain Communication Specification for Cable-Based Freight Train Control System;
- S–4240, ECP Brake Equipment—Approval Procedure;
- S–4250, Performance Requirements for ITC Controlled Cable-Based Distributed Power Systems; and
- S–4260, ECP Brake and Wire Distributed Power Interoperability Test Procedures.

The main standard, S–4200, ensures that the functionality and performance of freight ECP brake systems are uniform and consistent among equipment from different manufacturers, that cars equipped with AAR-approved ECP brake systems from different manufacturers are interoperable, and that AAR-approved electronic brake systems meet a high standard of safety and reliability. This standard defines ECP brake system elements, specifies their functionality in different implementation schemes—such as stand-alone, overlays, and emulators—and sets the requirements for all system functions. It covers all primary functions of ECP brakes, including graduated brake application and releases, continuous reservoir charging, adjustment of braking level to car load, continuous fault detection, equipment status monitoring, and pneumatic backup. It also specifies requirements for all modes of train operation and provides an extensive description of fault response and recovery functions for all possible faults of the system components. The standard also establishes environmental requirements for the designed systems, in-service testing, and rigorous approval procedures for certification process of new ECP brake equipment.

Other standards in the AAR S–4200 Series (S–4210, S–4220, S–4230, S–4250, and S–4260) contain requirements for critical ECP brake system components and communication protocols. Standard S–4210 contains the performance specifications and qualification test procedures for ECP brake system cables, connectors, and end-of-car junction boxes. The required testing verifies that the designed components have high reliability, will withstand harsh environmental conditions, and will have at least an 8-year operating life.

Standard S–4220 contains performance specifications for the DC power supply system through the hard-wired train line cable for ECP brake controllers and other electronic freight car components. Since a DC power supply conductor will also send communication control commands between a locomotive and its attached cars, the standard requires reliable separation and absence of interference between the DC power supply and the communication circuits.

Standard S–4230 contains the requirements related to intra-train communication systems on freight equipment used in revenue interchange service. The standard facilitates interoperability between freight cars and locomotives without limiting the proprietary design approaches used by individual suppliers. The communication protocol was developed for control of ECP brakes and multiple remote units, including distributed power locomotives, and for safety reporting of various car and locomotive components.

Standard S–4250 contains the methodology and communication flow requirements for controlling the operation of multiple locomotives in a freight consist through the intra-train communication network that is shared with the ECP brake system. The locomotive control through the intra-train communication line is an alternative method of locomotive control, which was not available before the introduction of ECP brake system technology. The controlled locomotives can either trail a lead locomotive or be remotely located (i.e., separated by cars) in a train. The standard establishes protocols for different types of locomotive controls through the intra-train line cable, depending on the location of the consist's multiple locomotives.

Standard S–4260 contains the test procedures that must be completed by ECP brake suppliers to establish interoperability baselines among ECP brake and wire distributed power (WDP) systems in compliance with the S–4200 standards series. The test procedures validate the functional interoperability of ECP brake and WDP systems developed by different manufacturers.

The AAR approval process and the work of the Air Brake Systems Committee has been the primary method of ensuring the safety and reliability of railroad brake systems and components for decades. FRA proposes that meeting all the requirements of the AAR ECP brake standards and obtaining AAR approval will be a prerequisite for any new ECP brake system to be employed on U.S. railroads. Through its participation on the Air Brake Systems Committee, FRA can monitor any safety or reliability issues that may develop with ECP brake systems. In the event of a serious safety issue with a supplier's ECP brake system, FRA can appropriately respond by invoking its authority to intervene with additional rulemaking or an emergency order. FRA does not expect to use this authority, because the AAR Air Brake Systems Committee already has the authority to rescind AAR approval for brake systems that do not perform safely or reliably.

Standard S–4240 contains the acceptance procedure for seeking AAR approval of ECP brake equipment. The standard requires a manufacturer to apply for approval by submitting certain information under Administrative Standard S–060. Following review and

approval of the initial application data and test plan by the AAR Air Brake Systems Committee, a manufacturer maintains the burden of establishing compliance with Standards S–4200, S–4210, S–4220, S–4230, S–4250, and S–4260 to obtain conditional approval.

For laboratory testing, an AAR representative will select 150 CCDs from a lot of 200 and will select HEUs, train power supplying units (TPSs), and ECP–EOTs from lots of four each. The testing will be performed on a 150–car test rack configured in accordance with AAR specifications. The manufacturer will provide for AAR evaluation of the test results, which shall include a requirements traceability and compliance matrix for each AAR standard and all necessary test reports, and then conduct interoperability laboratory testing between new ECP brake equipment and AAR-approved ECP brake equipment in accordance with standard S–4260.

Upon satisfactory completion of the aforementioned laboratory tests, AAR will consider conditional approval for field testing of ECP brake equipment. If conditional approval is granted, 150 ECP brake CCDs shall be selected from a production lot of 200 test-approved CCDs, and 100 of those selected, plus at least two ECP brake equipped locomotives and one ECP–EOT device, must be placed in railroad service for 24 months. Under conditional approval, at least 1,000 cars must be allotted for use.

Within those 24 months, all in-service tests must be conducted. After those 24 months, the Air Brake Systems Committee continues to monitor the product for reliability and safety concerns. If a problem with any brake component is discovered, the Committee will discuss the issue and may either demand further tests or withdraw AAR approval.

Full AAR approval shall be provided after 4 years if during that time a manufacturer furnishes AAR at specified intervals various service reports, which must include accurate ECP brake equipment malfunction records. FRA agrees with AAR's assessment that 4 years are needed to collect a history of reliable data with minimum failures. In addition, the manufacturer must provide to AAR a semiannual report containing any repair material for the test ECP brake equipment. Under the draft standard, AAR reserves the right to withdraw conditional test approval if it determines that safety is impaired, reliability degrades, or incompatibility of ECP brake operation develops, and may require any additional testing or performance evaluations it deems necessary. Standard S–4240 also contains specific procedures that must be followed when a manufacturer intends to change certain ECP brake equipment physical characteristics, software, or electronics.

FRA supports this effort as a timely measure for AAR to strengthen the regulatory package for ECP brake systems. Overall, FRA considers AAR approval a valuable step to ensure the reliability and safety of ECP brake systems and a minimum requirement for initial application of ECP brake systems on the Nation's railroads. However, FRA fully intends to monitor the application and safety of ECP and may, at its discretion, require additional safety analysis to be performed to confirm the safety of ECP brake systems installed and operating in revenue service. FRA reserves the right to witness the AAR approval testing of the product.

B. FMECA

AAR Standard S–4200 Series was developed to support the design of a safer, more reliable ECP braking system when compared with conventional air brakes. Once the standard was created, the railroad industry identified the need to perform a safety and reliability assessment of an ECP brake system built in accordance with this standard. Since actual S–4200 ECP brake systems did not yet exist, the industry decided to conduct a FMECA for a hypothetical ECP brake system that satisfied all the requirements of the standard. At FRA's insistence, the FMECA on AAR Standard S–4200 was performed in 1999 by DEL Engineering with participation of AAR, FRA and a number of experts with significant experience in the development and application of ECP brake systems.

The FMECA team began the analysis by identifying all major ECP brake system components and their intended functions. The analysis examined each component and function and identified associated failure modes and effects. The failure modes were analyzed to determine severity, frequency of occurrence, and effectiveness of detection. The FMECA team created a numeric ranking criterion and determined and prioritized the level of risk posed by each failure mode. High risk failure modes were identified and appropriate mitigation strategies were developed to decrease the risk.

The FMECA team analyzed the failure modes of all ECP brake components, including: CCDs with the battery; HEUs on the head locomotive; ECP–EOT devices; train line cables, communication and power supplies; power supply controllers; head end line terminators; car ID modules; locomotive ID modules; and operative brakes. The analysis included different types of ECP brake systems, including stand alone, overlay (dual mode), and emulator and all system functional requirements and operating modes, including Initialization, Switch, Run, and Cut-out. The FMECA failure log contained about 1,500 failure modes. For each high-risk failure mode, the FMECA team identified action items and offered recommendations on how to mitigate the consequences of component failures or system functional failures. The team primarily examined single-point failures but also identified and evaluated some cases of combined failures that had significant safety consequences.

The FMECA results confirmed that the ECP brake concept offers the potential for improved performance, reliability, and safety over that of conventional pneumatic brake systems. The FMECA concluded that no failure mode of an AAR-compliant ECP brake system exists that can cause a catastrophic accident due to single-point failure of the system itself. The AAR standards, as written, eliminate or mitigate critical outcomes of single-point failure of ECP brake systems.

The FMECA team encouraged manufacturers to pursue ECP brake technology, because the potential safety and efficiency benefits will far outweigh any disadvantages. If designed and maintained properly, ECP brakes will be substantially safer and more reliable than the conventional pneumatic brake system they are intended to replace.

AAR and the brake manufacturers indicated that they were completely satisfied that ECP brake systems are significantly safer than conventional pneumatic systems. They accepted the results of the FMECA and concluded that no modifications were necessary to the AAR standards related to ECP brake systems.

VII. Market Maturity and Implementation

The U.S. market for ECP brake systems is mature enough to begin implementation of ECP brake technology. The equipment manufacturers have made a significant investment in the technology and have completed the preliminary design work and field testing of ECP brakes. For instance, they have provided technical solutions for different ECP brake implementation strategies, enabling non-ECP and ECP brake equipped cars to run in combined trains and, in some cases, allowing ECP-equipped freight cars to run in ECP brake mode using locomotives with conventional

pneumatic brake systems. In addition, they are ready to supply fully operational stand-alone ECP brake systems, overlays, and emulators for the U.S. market, easing the industry's migration process. A commitment by the railroad industry to change over to ECP brakes is necessary to inspire additional technological initiatives by the manufacturers.

ECP brake systems from three U.S. manufacturers—all in different stages of AAR approval and testing in revenue service—have been built with the intention of complying with the AAR S–4200 Series of standards, proven safe through field testing, designed using fail-safe principles, and accommodated the industry's need for a different implementation scheme. The AAR S–4200 Series standards are intended to assure the necessary level of safety, reliability, interoperability, and, ultimately, the applicability of this equipment in the U.S. market. The equipment of all three suppliers relies on the conventional pneumatic emergency brake system as a backup in case of failure of the ECP brake control. In most cases, ECP brake systems will support enhanced safety even if the electronics fail, because continuous recharging of the brake pipe will ensure availability of an emergency application. Therefore, the ECP brake system reduces the risk caused by depleted air in the case of an emergency. There is no instance of a malfunctioning ECP brake system that resulted in a catastrophic or critical event.

To assess the benefits and costs of ECP brakes for the U.S. rail freight industry, FRA contracted BAH in 2005 to conduct a study. An ECP brake expert panel of principal stakeholders in the conversion of the U.S. freight car fleet to ECP brake technology, including suppliers, railroads, private car owners, AAR, and FRA was assembled to participate in the study. The expert panel supports the conclusion that the AAR standards are sufficient for the ECP brake system designer to achieve a system safety level adequate for a safety-critical system. In particular, an AAR-compliant system, while providing a significant increase in safety and efficiency, does not introduce extra risks associated with single-point failure of the ECP system itself.

The final BAH report provided a comprehensive analysis and comparison of ECP and conventional air brake systems. BAH acknowledged that while trains with ECP brake systems have been run in North America, South America, and Australia, U.S. implementation has been stalled due to the absence of an acceptable implementation plan for conversion and hard data to support a sound economic analysis, limited interoperability with traditionally braked trains, and insufficient capital investment required for conversion. It concluded that although the barriers to implementation are formidable, ECP brake systems are economically and technically ripe for adoption and should be implemented in phases over the course of 2 to 4 years to collect hard data supporting further implementation. BAH posits that implementing ECP brakes on 2,800 locomotives and 80,000 cars in the Powder River Basin (PRB) would cost the industry approximately $432 million. However, according to BAH, the annual $157 million in anticipated benefits—resulting from saved fuel, improved wheel and brake shoe life, and a reduction in necessary brake inspections—will allow railroads to recover those costs in less than three years. To justify the investment, the BAH report says, conversion must be focused first on the high-mileage, unit-train-type services that would most benefit from its use.

FRA acknowledges that BAH's fuel cost estimates are substantially underestimated due to subsequently rising prices and that the benefits from improved wheel life require re-evaluation since BAH was privy to insufficient hard data. It is notable that BAH did not attempt to quantify potential savings relating to capacity increases or emissions decreases due to the difficulty in arriving at acceptable values. Accordingly, the report's estimated internal rate of return should be viewed as conservative.

VIII. Related Proceeding

In a petition dated November 15, 2006, and filed November 21, 2006, BNSF and NS jointly requested that FRA waive various sections in parts 229 and 232 as it relates to those railroads' operation of ECP brake pilot trains. *See* Docket No. FRA–2006–26435. The FRA Safety Board held a fact-finding hearing on this matter on January 16, 2007, featuring testimony from representatives of the petitioners, air brake manufacturers, and labor unions. On March 21, 2007, the Safety Board granted the petitioners' request, in part, subject to various conditions designed to ensure that trains subject to the waiver will be as safe as trains operated without benefit of the waiver. *See Id.* FRA will closely monitor compliance with the waiver and verify brake system and component performance characteristics using unannounced inspections of trains subject to the waiver.

IX. Legal Impediments and Proposed Relief

ECP brake operation provides for continuous electronic monitoring of air brake system components condition and brake pipe pressure, potentially limiting the need for certain physical brake inspections currently required under part 232. Accordingly, FRA proposes modifying, relaxing, or removing certain requirements, including intermediate terminal inspections (§ 232.209), single-car air brake tests (§ 232.305), and the required percent of operable brakes at initial terminal departure (§ 232.103(d)), as they apply to trains operating in ECP brake mode.

The rail industry's implementation of ECP brakes is frustrated by such inapplicable and inefficient statutory and regulatory requirements. Without a large-scale proliferation and implementation of ECP brake technologies, the industry will not be able to enjoy economies of scale and to overcome the industry-wide limits caused by interoperability problems. FRA seeks to improve market efficiency by providing reliable and suitable standards and procedures that will support investments in ECP brake technology.

The current statutory and regulatory requirements, however—including those concerning brake inspections and the operation of trains with defective equipment—may reduce or eliminate incentives for railroads to implement new ECP brake technology and take advantage of its operational and safety benefits. For example, 49 U.S.C. 20303 presents an obstacle to cost-saving, safe, and efficient long hauls promised by ECP brakes. To avoid incurring civil penalties, operators are required under 49 U.S.C. 20303 to transport rail vehicles with defective or insecure equipment ''from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made.''

When the defective equipment is an ECP brake, stopping for a physical inspection is not necessary, as it does not increase the safe operation of the train. If more than 15 percent of the train's AAR approved ECP brakes become inoperable, the train automatically stops. A train with 85 percent operative ECP brakes will have 15 percent less overall braking capacity than a conventional pneumatic train with 100 percent operative brakes—an important concern when operating on long grades. However, a train with 85 percent operative ECP brakes will still

have shorter stopping distances than a conventional pneumatic braked train with 100 percent operative brakes. Considering the technology's continuous self-monitoring and constant communication with the engineer, it is highly unlikely that a train will ever reach such a level of inoperability. Further, FRA believes that an ECP brake operated freight train may travel non-stop to its destination, not to exceed 3,500 miles, because foundation brake rigging and brake shoes will safely operate over this distance and redundant intermediate brake inspections for an ECP brake operated train moving that distance do not increase ECP brake system safety. As an added benefit, the increased mileage allowance would provide for coast-to-coast travel. In the related proceeding, Docket No. FRA–2006–26435, FRA's Safety Board granted the request of BNSF and NS to allow the non-stop movement of an ECP brake operated train to its destination, each not to exceed 3,500 miles. FRA believes that the proposed rule should codify this regulatory relief so that it applies universally.

Nevertheless, 49 U.S.C. 20303 requires trains with defective equipment, including brakes, to travel to the nearest repair location. If the nearest available repair location is in a direction other than that in which the train is traveling, the train with defective equipment must switch the defective car out of the train and add it to another train traveling in the direction of the repair location, sometimes requiring a ''backhaul.'' ECP brake implementation has been complicated by the ECP brakes system's technological incompatibility with conventional pneumatic brake systems. To switch a car equipped with ECP brakes into a technologically incompatible train operating with conventional pneumatic brakes, however, will create additional safety hazards for that train.

The potential risks involved in combining cars with incompatible braking systems coupled with the hazards normally associated with switching cars in the field, likely outweigh the potential harm of keeping the defective car in its existing ECP braked train and traveling to a repair location that is further away. In circumstances where the defective safety appliance is a non-brake defect, it may be safer and more efficient to allow ECP brake equipped trains with non-brake defective equipment to travel to the nearest forward repair station. Moreover, due to the ability of ECP brake systems to continuously monitor the brakes on each car in a train and to provide specific information to the locomotive engineer regarding the location of any car with inoperative brakes and the inherent design of such systems to prohibit operation with less than 85 percent operative brakes, the need to immediately set-out and handle cars with defective brakes for repair is unnecessary. There is also no safety need to require a railroad to incur the expense and delay involved with cutting the defective car out of the train. Currently, freight cars with defective mechanical conditions are permitted to be hauled long-distances for repair. *See* 49 CFR 215.9. In light of the technological advances provided by ECP brake systems, it appears logical and necessary to permit more flexibility in moving equipment with defective brakes when equipped with ECP brakes and hauled in a train operating in ECP brake mode. However, the language of 49 U.S.C. 20303, prevents FRA from providing this flexibility.

The aforementioned requirements governing conventional pneumatic braked trains may offset the increased safety and efficiency benefits afforded by ECP brakes, thus eliminating the incentives for rail operators to implement ECP brake technologies. To encourage implementation without hindering safety, FRA proposes to invoke its discretionary authority under 49 U.S.C. 20306 to exempt ECP brake equipped trains from the specific statutory requirements contained in 49 U.S.C. 20303. The requirements for moving defective equipment were created over a century ago, during the infancy of pneumatic brakes and before all cars were equipped with power brakes. With many more reasons to stop train operation along tracks with frequent repair shops and exponentially more employees, the legislative drafters of that time could not have envisioned the type of safer and more efficient technologies available today.

Recognizing the importance of upgrading rail technologies, Congress in 1980 passed the Rock Island Railroad Transition and Employee Assistance Act (the ''Rock Island Act''), which, inter alia, provides statutory relief for the implementation of new technologies. More specifically, when certain statutory requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations, the applicable section of the Rock Island Act, currently codified at 49 U.S.C. 20306, provides the Secretary of Transportation with the authority to grant an exemption to those requirements based on evidence received and findings developed at a hearing.

According to Senate Report No. 96–614, ''This section fosters rail technological improvements by giving the Federal Railroad Administration *discretionary* authority to grant exemptions from the Safety Appliances Acts' mandatory requirements *when those requirements preclude the development or implementation of new rail technology.*'' Senate Comm. on Commerce, Science, and Transportation, S. Rep. No. 96–614, at 8–9 (Mar. 4, 1980) (emphases added). The House version of the bill includes no similar provision, but the Conference substitute adds that the authority granted FRA in this section must be exercised after a hearing, absent an agreement between labor representatives and the developers or operators of the new equipment or technology. Joint Explanatory Statement of the Committee of Conference, H. Conf. Rep. No. 96–1041, § 117, at 30 (May 20, 1980).

Under 49 CFR 1.49(v), the Federal Railroad Administrator is delegated authority to carry out the functions vested in the Secretary by the Rock Island Act. Under this authority, FRA intends to schedule a hearing to be set at a date established in a forthcoming notice, at which the Administrator or his delegated representative may preside, to receive evidence and develop findings to determine whether FRA should invoke 49 U.S.C. 20306. The scope of the hearing will include the following questions:

- Will allowing an ECP braked train with defective brakes to travel to its destination, not to exceed 3,500 miles, decrease, maintain, or exceed the level of safety provided for a conventional pneumatic braked train receiving a Class 1A brake inspections every 1,000 miles?
- What safety hazards, if any, will be caused by switching an ECP braked car into a technologically incompatible train equipped with conventional pneumatic brakes?
- What is safer for an ECP braked car with defective non-brake parts: Switching it into a train equipped with conventional pneumatic brakes—rendering the switched car's ECP brakes ineffective—for backhauling to the nearest repair station or allowing it to continue to the nearest forward repair location in the ECP brake equipped train with more than 85 percent effective and operative brakes?
- Does 49 U.S.C. 20303 provide a disincentive sufficient to preclude implementation of ECP brake technology?

X. Additional Issues

A. Part 229

In the related proceeding, Docket No. FRA–2006–26435, BNSF and NS seek relief from various provisions of parts 229 and 232. In relation to part 229, BNSF and NS seek relief from the requirements relating to daily locomotive inspections and electronic record keeping. At this point in time, FRA believes that there is insufficient information available to consider any exceptions to part 229 for operations using ECP brake systems. In any event, FRA seeks comments and information relating to this issue.

B. Dynamic Brake Requirements

At the public hearing conducted in the related proceeding, BNSF requested relief from some of the dynamic brake requirements contained in 49 CFR part 232. FRA is unclear of what specific relief is requested regarding dynamic brakes. Section 232.109 provides for the continued operation of a locomotive found with inoperative dynamic brakes for a period of up to 30 calendar days. FRA does not see how more flexibility in this area is necessary. However, FRA invites interested parties to comment on the requested relief or clarify the necessity of such relief.

C. Single Car Air Brake Test Approval Procedures and Single Car Air Brake Tests

The proposed rules include a provision requiring the submission and approval of single car air brake test procedures for cars with ECP brake systems in accordance with the special approval procedures in § 232.17. At this time, the proposed rules do not modify § 232.17. However, FRA reserves the right to modify § 232.17 to make clear the applicability of proposed subpart G, including, but not limited to, adding cross-references.

Section 232.305(a) provides that a single car air brake test may be performed partially in accordance with ''Section 4.0, 'Special Tests,' of the Association of American Railroads Standard S–486–01, 'Code of Air Brake System Tests for Freight Equipment,' contained in the AAR Manual of Standards and Recommended Practices, Section E (January 1, 2001).'' That standard has since been amended and FRA has approved the use of the new Standard S–486–04 as the procedure to use when performing a single car air brake test. Accordingly, FRA proposes to amend § 232.305(a) by replacing the directly preceding quoted text with the following: ''Section 4.0, 'Special Tests,' of the Association of American Railroads Standard S–486–04, 'Code of Air Brake System Tests for Freight Equipment,' contained in the AAR Manual of Standards and Recommended Practices, Section E (January 1, 2004).''

D. Train Handling Information

Section 232.111 requires railroads to adopt and comply with written procedures ensuring that railroad train crews receiving trains are provided accurate information concerning the train's condition. The continuous monitoring capabilities of ECP brake systems provide information regarding the location of equipment with inoperative or cut out brakes. At this time, however, FRA does not see any reason for excepting any portion of or provision contained in § 232.111. FRA believes that, if anything, ECP brake systems' continuous monitoring capabilities will assist railroads in complying with the train handling information rules in § 232.111 by monitoring defects and potentially allowing for the manual input of defects not monitored electronically and then electronically providing such information to subsequent train crews. FRA seeks comments and information on this issue.

E. Piston Travel Limits

For cars equipped with 8½-inch or 10-inch diameter brake cylinders receiving either a Class I brake test or a periodic inspection while on a shop or repair track, §§ 232.205(c)(5) and 232.303(c) currently limit piston travel to 7 to 9 inches. An industry-wide waiver currently in effect, however, permits piston travel limits to range from 6 to 9 inches. FRA proposes to incorporate that waiver into the rules by amending §§ 232.205(c)(5) and 232.303(c) accordingly. FRA seeks comments and information on this issue.

F. Extended Haul Trains

Section 232.213(a)(6) requires inbound inspections for extended haul trains and states that, ''After April 1, 2007, the inbound inspection described in this paragraph shall not be required unless FRA provides notification to the industry extending the requirement to perform inbound inspections on extended haul trains.'' Section 232.213(a)(7) requires railroads to maintain a record of all defective, inoperative, or ineffective brakes and all conditions not in compliance with parts 215 and 231 of discovered during train movement. In addition, that section says that, ''After April 1, 2007, the records described in this paragraph need not be maintained unless FRA provides the notification required in paragraph (a)(6) of this section extending the requirement to conduct inbound inspections on extended haul trains.''

FRA proposes to amend Part 232 by deleting §§ 232.213(a)(6) and (a)(7) from the regulations. These regulations ''sunsetted'' on April 1, 2007, without further FRA action. Accordingly, they serve no purpose remaining in the CFR. FRA seeks comments on this proposal.

G. Part 238

Amtrak has informally expressed interest in potentially using ECP brake system technology for its Auto Train that runs from Lorton, Virginia to Sanford, Florida. Amtrak has previously employed overlay ECP braking on that train, and presumably would benefit from some additional flexibility with respect to the conduct of intermediate inspections. However, since FRA does not currently have sufficient information regarding the use of ECP brake systems on passenger trains and passenger equipment, FRA does not propose in this rulemaking to amend 49 CFR part 238. The functions of freight and passenger trains and cars, evidenced by the varied rules applicable to each, are too disparate to provide a one-size-fits-all solution for ECP brake integration and use. FRA may consider Part 238's applicability to ECP brake systems in another rulemaking or in other proceedings. If comments appropriate to this rulemaking are submitted, FRA reserves the right to include provisions addressing those issues at the final rule stage. Further, FRA would consider requests for waivers relating to the regulation of freight trains and freight cars equipped with ECP brake systems for passenger trains on a case-by-case basis.

XI. Section-by-Section Analysis

Proposed Amendments to 49 CFR Part 232

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR). FRA seeks comments on all proposals made in this NPRM.

Subpart A—General

This subpart of the proposal contains amendments to the definitions listed in subpart A of part 232.

Section 232.5 Definitions

FRA proposes to amend § 232.5 by adding an extensive set of definitions to introduce the regulatory relief and regulations applicable to ECP brake systems. FRA has worded these definitions to mirror, to the extent possible, the definitions provided in

existing AAR standards. FRA intends these definitions to clarify the meaning of important terms that are used in the text of the proposed rule. The proposed definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the rule. Some of the definitions introduce new concepts or new technologies which require further discussion.

The proposed definitions acknowledge the two general types of ECP brake systems—dual mode and stand-alone. The definition of a dual mode ECP brake system, which means a brake system that can work either as a conventional pneumatic brake system or an ECP brake system, intends to cover both an overlay ECP brake system and an ECP brake system equipped with an emulator CCD. The definition of CCD is intended to describe an important and necessary part of ECP brake system technology.

Subpart G—Electronically Controlled Pneumatic (ECP) Braking Systems

FRA proposes to add a new subpart G to Part 232. This proposed subpart contains the design and operational requirements that will provide regulatory relief and modifications to allow implementation of ECP brake systems on the Nation's railroads and to ensure the safety of such operations.

Section 232.601 Scope

This section contains a formal statement of the proposed rules' purpose and scope. The proposed rules contain specific requirements relating to the operation of freight trains and freight cars equipped with ECP brake systems and operating in ECP brake mode. The proposed provisions also intend to provide specific exceptions from various requirements contained in part 232 for ECP brake equipped freight trains and freight cars.

Section 232.602 Applicability

As a general matter, this section proposes that these rules apply to all railroads that operate ECP brake equipped freight trains or freight cars on track which is part of the general railroad system of transportation. The proposed rules will apply to freight trains operating in ECP brake mode, freight cars equipped with ECP brake systems, and conventionally braked freight trains and freight cars when operated in conjunction with ECP brake equipment.

The regulatory relief contemplated by this NPRM and the need to ensure the safe operation of trains and vehicles equipped with this advanced technology requires that exception of certain existing Part 232 provisions be afforded. Many of the provisions for which FRA proposes an exception either apply awkwardly or should otherwise not apply to ECP brake systems due to the new technology's design or additional safety benefits. Similarly, the addition of various requirements directly related to ECP brake systems is necessary to ensure that the equipment is properly inspected, tested, maintained, and safe to operate.

To fulfill these goals and to avoid an excess of confusing cross-references, FRA proposes to except specific provisions and an entire subpart of Part 232 from application to ECP brake systems. Each section of this proposed subpart contains specific exceptions from various provisions contained in other portions of Part 232 or contain appropriately rewritten provisions directly applicable to ECP brake systems. Those portions and sections of Part 232 not specifically excepted by the provisions proposed in this NPRM remain applicable to ECP brake equipped freight trains and freight cars.

Section 232.603 Design, Interoperability, and Configuration Management Requirements

In order to ensure the safety and interoperability of ECP brake systems, this section proposes to incorporate by reference the existing AAR standards and approval procedures for ECP brake systems. The AAR, its member railroads, and various brake manufacturers have invested considerable time and effort in developing industry standards addressing the design, performance, and interoperability of ECP brake systems. FRA has reviewed the industry standards it proposes to incorporate in this rule and has determined that the standards effectively address and ensure the safe and proper operation of the brake system technology. As noted in the preamble, FRA funded a FMECA, which validated the safety and applicability of AAR's ECP brake system standards for freight railroads.

FRA believes that compliance with the AAR standards identified in proposed paragraph (a) will ensure the safety and efficiency of ECP brake equipped freight trains and freight cars. Implementation of ECP braking systems complying with these standards will bring benefits and efficiencies encompassing train handling, car maintenance, fuel savings, network capacity, self-monitoring, fail-safe operation, accurate and instantaneous brake commands throughout the train, and continuous, real-time self-diagnostics. Paragraph (a) proposes to require all suppliers to meet existing AAR standards when developing and installing ECP brake systems.

Paragraph (a) proposes the incorporation of the most recent AAR standards related to ECP brake systems. FRA recognizes that ECP brake systems are a growing technology and realizes that the existing AAR standards may need to change as the technology advances. Accordingly, FRA proposes two methods the incorporated industry standards may be changed. Proposed paragraph (a) permits the submission of an alternate standard under the special approval procedures contained in § 232.17. In addition, proposed paragraph (f) permits the AAR or other authorized representative of the railroad industry to seek modification of the incorporated industry standards through the modification procedures contained in § 232.307. The modification procedures in § 232.307 were developed to permit modification of the incorporated AAR single car test standard and FRA believes that the procedures are equally applicable to these proposed regulations. The industry has successfully utilized both these methods to change or modify other industry standards incorporated in part 232 and FRA believes it is appropriate and necessary to provide this latitude for the standards related to ECP brake systems and components.

Paragraph (b) proposes that all ECP brake systems receive conditional or final approval under AAR's recently adopted Standard S–4240 prior to use and that they maintain such approval while in use. In this paragraph, FRA intends to prohibit the use of ECP brake systems that do not receive conditional or final AAR approval or that cease to comply with the incorporated AAR standards relating to ECP brake systems. FRA has reviewed the approval procedures contained in AAR Standard S–4240 and believes that they provide an appropriate review process to ensure the safe and proper operation of ECP brake systems. FRA believes that AAR is in the best position to approve those ECP brake systems that will be used by its member railroads and, over time, other non-member railroads interchanging traffic on the general rail system.

In paragraph (c), FRA proposes that all ECP brake systems meet the configuration management requirements contained in an FRA-recognized industry approved standard. FRA believes that configuration management of ECP brake system hardware and software components is an absolute requirement to ensure the

interchangeability, interoperability, compatibility and continued proper and safe operation of ECP brake systems. Compatibility of ECP hardware and software will have a direct effect on the safety and reliability of ECP brake systems running on the Nation's railroads.

The AAR approval process and Air Brake Systems Committee requires various procedures to ensure the interoperability and interchangeability of AAR approved ECP brake systems and their components. These same requirements and procedures have been used for many years to successfully manage the configuration of conventional pneumatic AAR approved air brake valves. Therefore, FRA believes that responsibility for the configuration management of AAR approved brake systems and their components should continue to reside with AAR and its Air Brake Systems Committee.

AAR standards, including its S–4200 Series of standards for ECP brake systems, however, do not provide requirements for hardware and software configuration management plans. AAR is in the process of developing standards related to ECP brake system configuration management, as evidenced by, among other things, standards S–4240, §§ 5.1 and 5.2, which require ECP brake manufacturers to obtain AAR approval for changes to approved hardware and software.

If a configuration management standard is completed and issued prior to the publication of this notice, FRA seeks comments during this proposed rule's comment period on the incorporation of the respective standard into the rules by reference. If it is published subsequent to the publication of this notice, FRA still seeks comments during this proposed rule's comment period and FRA will also consider other forums for receiving comments, including, but not limited to, the public hearing that will be held in connection with this proposal or by issuance of a supplemental notice informing interested parties of the standard's availability. In anticipation of AAR issuing such a standard in the near future, FRA proposes to incorporate that standard by reference in the final rule; provided FRA's review of the standard determines it is acceptable.

Although FRA prefers that the industry develop, adopt, and comply with a recognized industry configuration management standard, FRA recognizes that such a standard does not yet exist. Accordingly, paragraph (c) proposes that, in lieu of compliance with an AAR software configuration management standard, railroads may submit to FRA an alternate configuration management plan for approval. FRA seeks comments and information on what minimum requirements or guidelines should be considered for such submitted plans. FRA believes that configuration plans must be submitted for approval under § 232.17 and must be structured in accordance with accepted configuration management standards such as IEEE Std 28–1990, IEEE Standard for Software Configuration Management Plans, American National Standards Institute, 1990; or IEEE Std 1042–1987, IEEE Guide to Software Configuration Management, American National Standards Institute, 1987. FRA seeks comments on these suggested structures or any other standard structures. FRA intends that no train shall be operated in ECP brake mode in revenue service unless it is using an ECP brake system that complies with a configuration management plan incorporated into the final rule or another configuration management plan otherwise approved by FRA.

FRA believes that any ECP brake configuration standards should consider issues beyond initial approval. For instance, use of improper or out-of-date software versions for microprocessor controlled systems has been an issue in a variety of industries. Therefore, FRA cautions that more robust configuration management processes beyond those already included in AAR standard S–4200 may be needed to adequately control ECP brake system components, especially as more manufacturers apply for AAR approval of ECP brake systems. Further, safety or reliability issues may dictate that hardware or software configurations be changed once ECP brake systems are put in service on a large scale in the U.S. FRA encourages AAR, railroads, and manufacturers to ensure their ability to continually monitor and respond to hardware and software issues affecting ECP brake systems after initial approval.

FRA believes that AAR is capable of setting appropriate configuration management standards and related approval procedures. FRA intends to rely on AAR to monitor ECP brake component approval, configuration and compatibility. However, FRA, in its federal oversight role will monitor the activities of the Air Brake Systems Committee and the AAR ECP brake approval process to ensure that any safety or reliability issues that may emerge are addressed promptly and comprehensively. FRA will also issue additional configuration management requirements for the operation of ECP brake systems if, in the sole opinion of the FRA, the oversight of the AAR and the AAR Air Brake Systems Committee proves inadequate for the continued safe operation of ECP brake systems. In this case, FRA may take a variety of approaches including requiring railroads and car owners to develop their own configuration management plans for monitoring ECP brake system interchangeability, interoperability and compatibility. FRA seeks comments on how the rules can ensure continued monitoring of hardware and software issues affecting ECP brake systems after initial approval.

Paragraph (d) of this section proposes to except a freight car or freight train equipped with ECP brakes from certain existing provisions contained in Part 232. FRA recognizes that Part 232 requires compliance with other AAR standards not applicable to ECP brake systems. For instance, section 232.103(l) requires compliance with AAR Standard S–469–47 (''Performance Specification for Freight Brakes''), which specifies a train's air brakes must respond to the decrease and increase of brake pipe pressure. However, ECP brake systems respond to an electronic signal, not brake pipe pressure, rendering S–469–47 inapplicable to ECP brake systems. Accordingly, paragraph (d) proposes to except ECP brake systems from the requirements of AAR Standard S–469–47.

Subpart F of part 232 contains general requirements for introducing new brake system technologies. More specifically, it requires, *inter alia*, a pre-revenue acceptance testing plan. As FRA views existing ECP brake system technology to be a fully mature and well tested technology, FRA does not believe the provisions contained in subpart F are applicable to this existing technology. When subpart F was originally added to part 232, ECP brake technology was just beginning to gain prominence. Since that time, experience with the technology is far more developed and the technology is being used on many different trains around the world. Moreover, FRA believes that its proposal to require ECP brake systems to initially and continually comply with AAR standards and to be approved in accordance with AAR's approval procedures prior to being placed in service obviates the need for existing ECP brake system technology to comply with the requirements under subpart F. Accordingly, paragraph (d)(2) proposes an exception from the requirements contained in subpart F freight trains and freight cars equipped with existing ECP brake system technology that has been conditionally or finally approved by

AAR in accordance with its approval procedures prior to the effective date of the final rule in this proceeding. FRA has limited the exception to ECP brake system technologies approved by AAR as of the effective date of a final rule to provide an incentive to the industry to move the introduction of the technology along in a timely fashion.

In anticipation of future ECP brake technologies not currently contemplated within the scope of the incorporated AAR standards or not approved by AAR prior to the effective date of a final rule in this proceeding, FRA proposes paragraph (e), which provides a procedure for introducing such technologies without going through the pre-revenue testing procedures contained in subpart F. Paragraph (e) permits a party interested in using new ECP brake system technologies or using an ECP brake system technology not approved by AAR prior to the effective date of a final rule in this matter to file a written request with the FRA seeking an exception from subpart F. FRA would expect any such request to include a comprehensive narrative statement and any evidence or facts justifying the exception of the new ECP brake technology from the testing and demonstration requirements of subpart F. The material should fully explain the testing or demonstration that will be conducted pursuant to an FRA-recognized industry standard and ensure that FRA is able to monitor such testing or demonstration. FRA's Associate Administrator may revoke the exception in writing for any reason after providing an opportunity for the affected party or parties to respond.

Section 232.605 Training Requirements

The general training requirements for railroad and contractor employees for performing the inspection, testing, and maintenance on brake systems are contained in § 232.203. FRA proposes paragraph (a) of this section to make clear that the training requirements contained in § 232.203 are applicable to ECP brake system operations and to ensure that railroads update their training, qualification, and designation programs to include provisions for these operations. Thus, FRA proposes to require that railroad and contract personnel responsible for performing brake system inspections, tests, and maintenance on ECP brake systems be trained, tested, and designated in accordance with the requirements contained in § 232.203 on the ECP brake systems they will be required to inspect, test, and maintain.

FRA continues to believe that railroads and contractors are in the best position to determine the precise method of training that is required for the personnel they use to conduct required brake system inspections, tests, and maintenance. Although FRA provides railroads and contractors with broad discretion to develop training programs specifically tailored to their operations and personnel, FRA will expect railroads and contractors to fully comply with the training and qualification plans they adopt as they apply to ECP brake operations. A critical component of this training requires ensuring that employees have knowledge of the specific Federal requirements that govern their work. Accordingly, FRA proposes to require the training and qualification plans mandated under § 232.203 to include provisions applicable to the inspection, testing, and maintenance of ECP brake systems.

Section 232.203(c) contains general requirements or elements which must be part of any training and qualification plan adopted by a railroad or contractor. FRA continues to believe that the elements contained in this section are specific enough to ensure high quality training and broad enough to permit a railroad or contractor to adopt a training plan that is best suited to its particular operation. FRA continues to believe that the required training must provide employees with the necessary knowledge, skills, and abilities to perform the tasks required for the various types of brake systems the individual employee will be required to inspect, test, or maintain. Since FRA expects only a limited number of employees will be involved with ECP brake operations, a railroad or contractor may tailor its training programs only for those individuals involved with ECP brake systems, based on the tasks that employee will be required to perform on those specific systems.

Section 232.203(e) contains record keeping requirements, the cornerstone of the training requirements. FRA continues to believe that such records should be kept for employees inspecting, testing, and maintaining ECP brake equipped freight cars and freight trains. Because § 232.203 and proposed § 232.605 allow each railroad and contractor the flexibility to develop a training program that best fits its operation and does not impose specific curriculum or experience requirements, FRA continues to believe it is vital for railroads and contractors to maintain detailed records on the training they provide. Such documentation will allow FRA to judge the effectiveness of the training provided and will provide FRA with the ability to independently assess whether the training provided to a specific individual adequately addresses the skills and knowledge required to perform the tasks that the person is deemed qualified to perform. Moreover, requiring these records will deter railroads and contractors from circumventing the training requirements and discourage them from attempting to utilize insufficiently trained personnel to perform the inspections and tests required by this rule. FRA also intends to make clear that the required records may be maintained either electronically or on paper in the same manner as required under § 232.203.

Paragraph (a) also proposes continued compliance with § 232.203(f), which requires that each railroad or contractor adopt and comply with a plan to periodically assess the effectiveness of its training program. Although FRA agrees that a formal audit process may not be necessary, FRA also continues to believe that railroads and contractors should periodically assess the effectiveness of their training programs that would include an assessment of the training related to ECP brake systems. FRA continues to believe that periodic assessments may be conducted through a number of different means and each railroad or contractor may have a need to conduct the assessment in a different manner. Paragraph (a) proposes that a railroad or contractor institute a plan to periodically assess its training program regarding ECP brake systems and permit the use of efficiency tests or periodic review of employee performance as methods for conducting such review. FRA continues to believe that many railroads, due to their small size, are capable of assessing the quality of the training their employees receive by conducting periodic supervisory spot checks or efficiency tests of their employees' performance. However, FRA also continues to believe that on larger railroads the periodic assessment of a training program should involve all segments of the workforce involved in the training. FRA believes it is vital that labor be intrinsically involved in the assessment process, from beginning to end. For example, evaluation of training techniques might best be approached through a ''team'' method, where several observers, including labor representatives, periodically evaluate course or ''hands-on'' training content and presentation.

Paragraph (b) proposes to require each railroad to appropriately amend or modify its operating rules to include safe train handling procedures when

utilizing ECP braking systems. The developed operating rules should address the equipment and territory operated by the railroad. FRA continues to believe that training on proper train handling procedures is essential to ensuring that locomotive engineers can properly handle their trains with or without ECP braking systems.

FRA also continues to believe that it should not specify the specific knowledge, skill, and ability criteria that a railroad must adopt into its locomotive engineer training program. FRA believes that each railroad is in the best position to determine what these criteria should be and what training is necessary to provide that knowledge, skill, and ability to its employees operating ECP brake equipped trains. However, to ensure that the railroads and contractors provide and complete training, paragraph (c) proposes to require each to adopt and comply with such criteria and training procedures and to incorporate them into its locomotive engineer certification program required by 49 CFR part 240.

Section 232.607 Inspection and Testing Requirements

Except for transfer trains, the existing Part 232 regulations require that a train receive a Class I brake test at its initial terminal and when certain events occur en route, a Class IA brake test every 1,000 miles and Class III brake tests when the train line cable continuity is interrupted. When operating as an extended haul train, the existing regulations require that a Class I brake test be performed at the train's initial terminal and at the train's 1,500-mile location consist, if operating further than 1,500 miles. In addition, under certain circumstances, cars and solid blocks of cars are required to receive either a Class I or a Class II brake test when they are added to a train. Each of these inspections is expensive and time-consuming.

An ECP brake system's self-monitoring capabilities, fail-safe operation, and enhanced safety and performance provide railroads the ability to reduce the number of physical inspections on a train and will reduce the number of repairs to the brake system. In a letter dated January 26, 2007, filed in the related waiver proceeding, BNSF and NS assert that ''This performance-based technology supercedes [sic] the need for a scheduled inspection based on the amount of mileage that can be accumulated within the boundaries of the U.S. rail system.'' Docket No. FRA–2006–26435. Similarly, in the same docket, two ECP brake manufacturers, Wabtec and New York Air Brake, state that when a ECP brake system enters ''Run'' mode, it provides diagnostics, continuous monitoring, and fault reporting to the locomotive display. According to the manufacturers, ECP brakes provide to the locomotive monitoring and feedback of the most important brake data and ''while it is not economically practical to monitor for all potential brake system failures, the increased level of monitoring and data reporting should allow safely extending the distance between inspection points, coupled with revised railroad procedures.'' Letter dated January 29, 2007 in Docket No. FRA–2006–26435.

FRA continues to believe that if a train is properly and thoroughly inspected, with as many defective conditions being eliminated as possible, then the train is capable of traveling distances much greater than 1,000 miles between brake inspections. FRA's experience with extended haul trains over the last three years has established that trains with conventional pneumatic brake systems that are inspected by highly qualified individuals can safely operate up to 1,500 miles between brake inspections. FRA is not aware of any significant incident or derailment related to a brake or mechanical component on an extended haul train. Accordingly, in paragraph (g), FRA proposes to except trains operating exclusively in ECP brake mode from the Class IA and Class II brake inspections currently required under §§ 232.207 and 232.209. FRA also proposes to except such trains from en route Class I inspections under § 232.205(a) and (b). Paragraph (g) also proposes to except § 232.211(a), which governs the locations where Class III brake inspections must be performed. For clarity, FRA proposes to include the events requiring the performance of a Class III brake test for trains operating in ECP brake mode in this section of the regulation. Accordingly, FRA proposes to except that section and instead include paragraph (e), which is analyzed below.

Paragraph (a) proposes continued compliance with § 232.205(c)—which describes the tasks and requirements of a Class I brake test—for an ECP brake equipped train at its initial terminal. To offset safety concerns regarding the proposed exceptions to intermediate inspections, FRA proposes that Class I brake tests at initial terminals be performed by a qualified mechanical inspector. FRA continues to believe that a Class I brake test performed on a train at its initial terminal needs to be as in-depth and comprehensive as possible and, thus, should be performed by an individual possessing the knowledge not only to identify and detect a defective condition in all of the brake equipment required to be inspected, but also to recognize the interrelated workings of the equipment and the ability to trouble-shoot and repair the equipment. Similarly, FRA proposes that all of the mechanical inspections required to be performed on a train at its initial terminal be conducted by an inspector designated pursuant to 49 CFR 215.11 in order to ensure that all mechanical components are in proper condition prior to the train's departure.

FRA believes that the regulatory relief proposed by paragraph (g) is justified by the increased safety level provided by ECP brake technologies and the proposed requirement under paragraph (a) that a Class I brake test of an ECP brake equipped car be performed by a qualified mechanical inspector at its initial terminal. The exceptions proposed in paragraph (g), in conjunction with the requirements of paragraph (a), would allow most ECP brake equipped and operated trains to travel to their destinations without stopping for any required intermediate inspections. The regulatory relief provided by the proposed elimination of intermediate brake tests would significantly reduce operating and train delay costs.

In paragraph (b), FRA proposes to permit a train operating in ECP brake mode to travel up to 3,500 miles or to its destination, whichever is less, without an additional Class I brake inspection. FRA believes that 3,500 miles allows virtually all ECP brake operated trains to travel to their respective destinations and provides for coast-to-coast travel. FRA also bases this mileage amount on the facts that foundation brake rigging and brake shoes will safety operate this distance and redundant intermediate inspections would not increase ECP brake system safety. Because many unit or cycle trains operate in a continuous loop with multiple loading and unloading locations, FRA has not included the destination of the train as a limiting factor for them. FRA is specifically making this distinction in order to prevent misinterpretation of the proposal as it relates to unit or cycle trains. As these trains may have multiple destinations, a strict application of destination could result in Class I brake tests being performed more frequently than intended by this proposed rule. Thus, in paragraph (b)(2), FRA proposes to treat unit and cycle trains differently by only requiring them to receive Class I brake inspections by

qualified mechanical inspectors at least once every 3,500 miles. To be clear, under the proposed rules, no ECP brake equipped freight car or freight train would be allowed to travel more than 3,500 miles without receiving a Class I brake inspection by a qualified mechanical inspector.

Currently, no extended haul train is permitted to travel more than 1,500 miles without receiving a brake inspection. For ECP brake equipped trains, FRA proposes to more than double the currently allowed distance to 3,500 miles. FRA acknowledges that in the related proceeding, Docket No. FRA–2006–26435, the Safety Board has provided for the movement of ECP brake equipped trains up to 3,500 miles. FRA proposes to codify this relief so that it would apply universally. Accordingly, during the pendency of this rulemaking, FRA will closely monitor those trains' operations and will collect information on the equipment operated in those trains. FRA reserves the right to make appropriate modifications in the final rule based on any further data then available.

FRA acknowledges, however, that notwithstanding the proposed allowance of an ECP brake equipped and operated train to travel up to 3,500 miles without an additional brake inspection, instances exist where certain trains would require the performance of a Class I brake inspection en route. For instance, the current regulations require that certain tests be performed when a car is off a source of compressed air for more than 4 hours. FRA acknowledges that an ECP brake equipped train's on board diagnostics reduce concerns relating to cars remaining off air for too long a period. Accordingly, FRA believes that an expansion of the time allowed off air is justified and proposes to modify this requirement for ECP brake equipped cars. For trains operating in ECP brake mode, FRA proposes in paragraph (c) to require a Class I brake test by a qualified person if that train is off air for more than 24 hours. FRA continues to believe that dangers, although reduced, remain when an ECP brake equipped train remains off air for too long. FRA proposes to limit off-air time to 24 hours since cars moving in service generally have a dwell time of 24 hours or less and to provide sufficient flexibility while allowing the industry to move equipment without impacting timely inspections and maintaining an acceptable level of safety. FRA also proposes that, for trains operating in ECP brake mode and off air for more than 24 hours, the Class I brake inspection be performed by a qualified person. FRA acknowledges that while a qualified mechanical inspector may be stationed at each route's initial terminal and destination, it may not be favorable at this time to require one at each location a train operating in ECP brake mode is off air for more than 24 hours. Requiring a qualified mechanical inspector at each point such a train is off air for more than 24 hours may provide a significant disincentive for a railroad to equip its trains with ECP brake systems.

FRA intends this requirement to also apply to trains operating in ECP brake mode, located at its initial terminal, and off air for more than 24 hours. In other words, under proposed paragraph (c), if at an initial terminal a qualified mechanical inspector performs a Class I brake test on a train operating in ECP brake mode and that train then goes off air for more than 24 hours before departing from the initial terminal, a qualified person must perform another Class I brake test prior to departure. FRA believes that requiring a qualified mechanical inspector at an initial terminal to perform a Class I brake test twice on the same train would be unnecessary, since the second testing would merely be a verification of the previous inspection, and possibly too onerous. FRA does not expect this situation to occur often, since trains rarely sit off air for more than 24 hours at its initial terminal after receiving a Class I brake test.

FRA's intent in proposing this narrow expansion of the 4-hour rule is not to alter the basic tenet that equipment should be retested when it is removed from a source of compressed air for any lengthy period of time. The proposed 24 hour off-air requirement would apply equally to any ECP brake equipped train, regardless of whether it is a unit or cycle train, and would replace the 4 hour off-air requirement under § 232.205(a), which would be excepted under proposed paragraph (g), as discussed above.

This proposed 24-hour allowance gives railroads flexibility to perform switching operations while ECP brake equipped trains are en route and provides flexibility to efficiently move cars from one ECP brake equipped train to another when necessary, yet retains the concept that such be retested when left disconnected from a source of compressed air for longer periods of time. The 24-hour time frame is also consistent with the general dwell time that cars experience while en route. FRA further believes that a limitation on the amount of time that such equipment may be off air is necessary for ensuring that such equipment is inspected in a timely and predictable manner. If no time limit were imposed or if too much time was permitted, an ECP brake equipped car could lawfully sit for days at various locations while en route to its destination and be switched in and out of numerous trains without ever being reinspected. Such an approach would drastically reduce the number of times that the brake systems on such equipment would ever be given a visual inspection from what is currently required and, in FRA's view, would seriously degrade the safety of the trains operating with such equipment in its consist.

Furthermore, if an ECP brake equipped train was allowed to be off-air for an excessive amount of time, it would be virtually impossible for FRA to ensure that equipment is being properly retested as it would be extremely difficult for FRA to determine how long a particular piece of equipment was disconnected from a source of compressed air. In order to make such a determination, FRA would have to maintain observation of the equipment for days at a time. Consequently, the proposed rule proposes a 24-hour limit on the amount of time equipment can be disconnected from a source of compressed air as it maintains current levels of safety and provides an enforceable and verifiable time limit that FRA believes provides the railroads some additional benefit over what is currently required both in terms of operational efficiency and cost savings.

In paragraph (d), FRA proposes to require that a Class I brake test be performed by a qualified person on ECP brake equipped cars added en route to a train operating in ECP brake mode. However, FRA believes that this requirement may not be necessary if other safety precautions are taken. Thus, FRA also proposes to allow such cars to not receive a Class I brake test when being added to a train operating in ECP brake mode if the car had previously received a Class I brake test, the train crew is provided documentation of that test, the car has not been off air for more than 24 hours, and a proper visual inspection is performed prior to use or departure.

Except in limited circumstances, the current regulations require a Class I brake test on each car added to a train at the location it is added to a train. *See* 49 CFR 232.205(b). Although FRA proposes to except ECP brake equipped trains and cars from § 232.205(b), as discussed above, FRA also proposes to retain the basic requirement that all cars added en route shall receive a Class I test by a qualified person unless they

have previously received a Class I brake test by a qualified mechanical inspector. A proper Class I brake test ensures that a car is in proper working condition and is capable of traveling to its destination with minimal problems en route.

Accordingly, if a ECP brake equipped car has received a Class I brake test by a qualified mechanical inspector within the last 3,500 miles, documentation of that test is provided to the train crew, the car has not been off air for more than 24 hours, and a proper visual inspection is conducted when the car is added to the train, FRA proposes with paragraph (d) that it would be unnecessary to require an additional Class I brake test when that car is added to an en route train operating in ECP brake mode. However, to account for those cars that have not received a Class I brake test by a qualified mechanical inspector within the last 3,500 miles and that will be added to a train operating in ECP brake mode, FRA proposes paragraph (d), which would require a Class I brake test under those circumstances. Paragraph (d) would be necessary in light of proposed paragraph (g) excepting compliance with section 232.205(b). FRA contemplates that this requirement would likely only apply to cars with overlay ECP brake equipment that had been operating in pneumatic mode. Unless a car operating in ECP brake mode is off air for more than 24 hours, it would not require a Class I brake test when it is added to a new train, since the proposed rules contemplate that the car would have already received a Class I brake test within the previous 3,500 miles or at its initial terminal. The documentation would be required to ensure that a Class I brake test by a qualified mechanical inspector will be performed every 3,500 miles. Under paragraph (d), any ECP brake equipped car being added to a train operating in ECP brake mode would require a Class I brake test when the car has been off air for more than 24 hours for the same reasons stated above concerning proposed paragraph (c).

FRA believes that a visual inspection of the car's brake components is a suitable replacement for an additional Class I brake test when the car or cars added in these circumstances have received a Class I brake test by a qualified mechanical inspector within the last 3,500 miles. The visual inspection proposed in this paragraph could be performed while the car is off air and could be conducted in conjunction with the mechanical inspection required under part 215 whenever a car is added to a train. Thus, FRA believes that the visual inspection proposed in this paragraph would not impose any significant burden on the railroads as they are already required to visually inspect the mechanical components on any car added to a train under part 215. FRA also acknowledges that the brake systems on cars not equipped with ECP brakes would be inoperative after being added to a train operating in ECP brake mode. To ensure the safe operation of such equipment and trains, FRA proposes that the transfer of cars equipped solely with conventional brake systems into trains operating in ECP brake mode also be given a visual inspection to ensure their safe operation and to ensure compliance with § 232.15.

FRA anticipates that placing a car equipped with conventional pneumatic brakes into an ECP brake equipped train may be awkward at best, requiring use of an electrical ''run around cable'' and manual inputs into the locomotive control system. In a letter dated February 5, 2007, AAR provided a list of recommended ''enhancements and modifications'' to Part 232 to facilitate the use of ECP brakes. A copy of this document has been placed in the docket of this rulemaking. In that communication, the AAR stated that railroads ''do not plan to commingle non-ECP equipment in stand-alone ECP trains.'' However, FRA believes that foreseeable—though rare—circumstances should be considered in this rulemaking to the extent possible. Accordingly, FRA seeks comments and information on what requirements may be necessary to safely allow the addition of cars equipped with conventional pneumatic brakes into an ECP brake equipped train, including, but not limited to, the placement and securement of cables along cars equipped with conventional pneumatic brakes to preserve their continuity between non-consecutive cars equipped with ECP brakes and the appropriate placement in the consist of cars equipped with conventional pneumatic brakes.

In the event that a car would be required to receive a Class I brake test when added to an en route train, FRA proposes that the Class I brake test be performed by a qualified person for the same reasons stated in the above analysis. To be clear, although any car added to a train en route may receive a Class I inspection by a qualified person, the entire train's travel distance is limited to its destination or the distance remaining until the train or any individual car picked up en route has traveled 3,500 miles since its last Class I brake inspection performed by a qualified mechanical inspector, whichever is less. A Class I brake inspection by a qualified person does not reset the mileage clock for the entire train.

FRA intends to continue to require Class III brake tests for trains operating in ECP brake mode. However, due to the changes related to adding cars en route and for purposes of clarity, FRA is including the triggering events for when a Class III brake test would be required in paragraph (e) of this section. As previously mentioned, for trains operating in ECP brake mode, FRA proposes in paragraph (g) to except § 232.211(a), which governs the locations where Class III brake inspections must be performed. Through paragraph (e), FRA intends to require Class III tests on trains operating in ECP brake mode where a locomotive or caboose is changed, a car or block of cars is added to or removed from the train, and whenever the ECP brake system's continuity is compromised when the train consist has not changed. FRA acknowledges that there has been confusion in unique circumstances where a Class III brake test may or may not be required. For instance, a Class III brake test would not be required when a consist is cut in half, but otherwise may remain unchanged, such as when blocking a crossing. Further, a block of cars could be added to the rear of a train without breaking the train line cable's continuity. Accordingly, to avoid any misunderstanding, FRA proposes to specifically detail when a Class III brake inspection will be required on trains operating in ECP brake mode. All other trains, including ECP brake equipped trains operating in conventional pneumatic mode, would remain subject to the provisions contained in § 232.211(a).

Paragraph (f) proposes to modify certain elements of the brake tests applicable to ECP brake equipped cars and trains operating in ECP brake mode. Under the current regulations, tests and inspections include brake pipe service reductions and designate specific psi specifications. FRA believes that modifications to the brake pipe reduction standard are appropriate to reflect the differences between ECP brakes and conventional pneumatic brakes. For instance, control of ECP brakes is not dependent on brake pipe pressure and ECP brake equipped trains have a nominal brake pipe pressure of 90 psi. Further, since brakes need only remain applied until the release signal is received and the ECP brake system communicates through an immediate electronic control signal, the requirement to keep the brakes applied for a period of three minutes is unnecessary. Since the ECP brake tests

include an equivalent electronic full service reduction with immediately provided results, the time consuming 20-psi brake pipe reduction required in the Class I and Class III brake tests and 15-psi brake pipe reduction required in the transfer train brake test and yard air test may no longer be necessary. In addition, the ECP brake system's electronic equivalent to a full service reduction may increase safety and testing efficiency.

In any event, brake pipe pressure remains important, since ECP brake equipped trains rely on the pneumatic backup system for safety purposes. Accordingly, for trains equipped with ECP brake systems, FRA proposes in paragraph (f)(1) to replace the existing brake pipe service reductions and increases with an alternative requirement for an electronic signal that provides an equivalent application or release of the brakes. FRA believes that any alternative test procedures must include, at a minimum, either the electronic equivalent to each existing test's brake pipe reduction requirements or the equivalent of a full service brake pipe reduction initiated by an electronic signal.

FRA seeks comments on this proposal, including the appropriate type of alternative test. In light of how the brake pipe's use in an ECP brake train will be limited to charging brake air reservoirs, FRA seeks comments on how the existing regulatory brake pipe leakage limits should be modified, if at all, for ECP brakes and whether changes in the leakage requirements will affect the pneumatic backup capability of the ECP brake system. In addition, comments should address the need to include the specific electronic reduction that is to be made on ECP equipped trains during the required brake tests and what type of electronic signals would be suitable equivalents to the currently mandated 20-psi and 15-psi brake reduction.

Paragraph (f)(2) proposes to modify certain regulatory requirements related to piston travel limits and adjustments during Class I brake inspections. For instance, under § 232.205(c)(5) a person performing a Class I brake test must ensure that piston travel be adjusted to specific distances. Although FRA believes that ECP brake operations require specific piston travel limits, FRA recognizes that the minimum piston travel limits contained in § 232.205(c)(5) may not be fully applicable to ECP brake systems. Since the ECP brake system precisely measures the amount of brake cylinder pressure for each specified application and maintains that pressure, piston travel tolerances for ECP brakes may not require the level of specificity as those for conventional pneumatic brake operations. Further, FRA acknowledges that a ''one-size-fits-all'' requirement for ECP brake system piston travel may not be ideal or applicable.

Accordingly, paragraph (f)(2) proposes to except the minimum piston travel limits in § 232.205(c)(5) as they apply to ECP brake systems. In place of the minimum piston travel limits required by § 232.205(c), paragraph (f)(2) proposes to require railroads, while performing Class I brake tests, to adhere to the minimum piston travel limits or distances recommended by the applicable manufacturer. FRA anticipates that a recommended minimum piston travel limit for each ECP brake system will be determined by the car's design, weight, and engineered brake ratio. FRA's basis for evaluation of manufacturer recommendations for the minimum piston travel limits will be based on the equivalent brake shoe force on the wheel as shown in the appropriate calculations or tests. At this time, FRA intends to retain the standard nominal adjustment of 7½ inches and the maximum piston travel limit of 9 inches in accordance with of § 232.205(c)(5). In any event, FRA seeks comments on whether and how the nominal piston travel adjustment limit should be flexible.

FRA proposes to require such limits be stenciled or marked on the car or badge plate in the same fashion FRA requires for systems and equipment subject to § 232.103(g). FRA believes that requiring the affixation of a legible decal, stencil, or sticker or the equipping of a badge plate displaying the permissible brake cylinder pistol travel range will effectively communicate the acceptable range to train crew members and will ensure the proper operation of a car's brakes after being inspected. FRA believes that this information is essential in order for a person to properly perform the required brake inspections. FRA believes that all vehicles equipped with ECP brake systems require marking in order to avoid confusion by those individuals responsible for inspecting and maintaining the equipment.

Section 232.609 Handling of Defective Equipment With ECP Brake Systems

In § 232.609, FRA proposes to modify certain part 232 requirements as they apply to freight cars and freight trains equipped with ECP brake systems and hauling defective equipment. In particular, for such trains and cars, FRA proposes in paragraph (k) to except certain existing requirements and in paragraphs (a) through (j) to provide alternative requirements.

Under § 232.15 and 49 U.S.C. 20303, railroads may be immune to civil penalty liability if a car or train with certain inoperative or defective equipment is hauled under certain conditions. Section 232.15(a) contains various parameters which must exist in order for a railroad to be deemed to be hauling a piece of equipment with defective brakes for repairs without civil penalty liability. The vast majority of the requirements contained in § 232.15(a) are a codification of the existing statutory requirements contained in 49 U.S.C. 20403 and are based on the voluminous case law interpreting those provisions. The statutory provisions require hauling defective equipment only to the nearest place where necessary repairs can be made and require 100 percent operative brakes from any location where such repairs can be effectuated. Thus, because many locations where trains are initiated with any frequency are also locations where brake system repairs can be effectuated, the statutory provisions essentially require 100 percent operative brakes from a train's initial terminal. FRA continues to believe that the proposed requirements relating to the movement of equipment with defective ECP brakes are generally consistent with the statutory requirements, ensure the safe and proper movement of defective equipment, and clarify the duties imposed on a railroad when moving such equipment.

In light of the increased safety levels produced by ECP brake systems, FRA proposes to use its discretionary authority under 49 U.S.C. 20306 to provide an exception from the rigid statutory provisions and modify the regulations concomitant to 49 U.S.C. 20303 governing the movement of defective equipment. Under certain circumstances, the statute and related regulations provide immunity from civil penalty when a train with defective equipment is hauled to the nearest location where the necessary repairs can be made, regardless of direction. Since a train equipped with an ECP brake system and operating in ECP brake mode with a minimum percentage of cars with defective ECP brakes is capable of traveling safely for long distances, FRA proposes to permit the operation of such a train and any cars with defective ECP brakes to its destination, not to exceed 3,500 miles, for repair without civil penalty.

While FRA believes that a train operating in ECP brake mode with some ineffective or inoperative ECP brakes

may continue to travel safely, concerns remain if such a train includes cars with defective non-brake or conventional pneumatic brake equipment. ECP brake systems do not reduce the danger of traveling with such defects. However, as previously noted, the switching and potential backhauling of ECP equipped cars into incompatible trains for the purposes of complying with 49 U.S.C. 20303 and 49 CFR 232.15 outweigh the danger of hauling such cars to the nearest repair location. FRA is also cognizant of the need for logistical flexibility to efficiently accomplish repairs during the transition from conventional pneumatic to ECP brake operations. Furthermore, requiring strict adherence to the statutory requirements related to moving defective equipment ignores the safety features provided by ECP brake system technology and could potentially stifle the industry's ability and desire to implement the technology. Accordingly, FRA will hold a public hearing to determine whether it can and should invoke its discretionary authority under 49 U.S.C. 20306 to except certain operations involving freight cars and trains equipped with ECP brake systems from the stringent statutory movement-for-repair provision. The hearing will also address FRA's exception of trains operating in ECP brake mode from the de facto statutory requirement for 100 percent operative brakes at an initial terminal as discussed above. At this time, FRA proposes to invoke such statutory and regulatory relief in paragraph (k) of this document, including exceptions from §§ 232.15(a)(2), (a)(5), (a)(6), (a)(7), (a)(8), and 232.103(d)-(e).

Under § 232.103(d), no train may depart a location where a Class I brake test is required to be performed on the entire train with any inoperative or ineffective brakes. Since trains equipped with ECP brakes and operating in ECP brake mode provide higher levels of safety, including shorter stopping distances and constant real-time monitoring of the brake system, than trains operating with conventional pneumatic brakes, FRA believes that some leeway needs to be provided for trains operating in ECP brake mode. However, FRA also acknowledges allowing a car to depart an initial terminal with inoperative or ineffective brakes may permit such equipment to move indefinitely without receiving the proper repairs. Accordingly, FRA proposes to limit the types and number of cars that may depart in a train operating in ECP brake mode from a location where the train is required to receive a Class I brake test.

Paragraph (a) proposes to allow a train operating in ECP brake mode to depart from its initial terminal with ninety-five percent effective and operative brakes under certain circumstances. Per paragraph (k), a train operating in ECP brake mode is excepted from § 232.103(d), which requires that one-hundred percent of the brakes on a train shall be effective and operative prior to use or departure from any location where a Class I brake test is required to be performed on the train pursuant to § 232.205. For ECP brake equipped trains, this requirement is replaced by the ninety-five percent effective and operative brake requirement proposed in paragraph (a). FRA believes that this requirement provides flexibility from the rules governing conventional pneumatic braking systems while rendering a sufficient brake failure buffer between departing an initial terminal with ninety-five percent effective and operative brakes and experiencing a penalty stop upon reaching eighty-five percent effective and operative brakes, as proposed by paragraph (d).

The one-hundred percent effective and operative brake requirement under § 232.103(d) is based on FRA's long-standing interpretation and application of AAR's inspection and testing standards as they existed in 1958 as well as the statutory provisions related to the use of power brakes and the movement of equipment with defective safety appliances. See 66 FR 4104, 4124, 4128 (Jan. 7, 2001). However, the design, operation, and safety benefits derived from the use of ECP brake systems dictate a need to modify this long-standing requirement. Under the AAR standards, if at any time the ECP brakes on a train become less than eight-five percent operative, the train will automatically stop via a penalty brake application. In addition, it has been determined that a train with eight-five percent operative ECP brakes will have better stopping distances than a conventional pneumatic braked train with one-hundred percent operative brakes. Moreover, ECP brake system technology provides the ability to continuously monitor the real-time status of the braking system on each car in a train. This allows a locomotive engineer to always know the exact status of his train's braking system. In light of this increased level of safety, FRA believes a partial reduction in the percentage of operative brakes is justified. FRA proposes modifying the requirement to 95 percent effective and operative brakes, which it believes strikes a balance between the current regulation and the need to allow for in-transit failures that could compromise the operation of the train or otherwise automatically shut it down when it reaches 85 percent effective or operative brakes.

Under paragraph (a), a train could only leave its initial terminal if a Class I brake test is performed by a qualified mechanical inspector and all ECP braked cars that are known to have arrived at the location with ineffective or inoperative brakes are repaired or handled accordingly. The proposed rule intends to ensure that at least 95 percent of the ECP brake equipped cars have effective and operative brakes prior to departure from an initial terminal and that cars are repaired in a timely fashion. The purpose of the ninety-five percent threshold is to prevent the delay or disassembly of a train for the removal or repair of a very small percentage of cars that are discovered to be defective for the first time while the railroad is conducting its in-depth inspections required at a train's initial terminal.

The 95 percent requirement also acknowledges that some initial terminals may not initially have the capabilities of repairing ineffective or inoperative ECP braking systems. Accordingly, paragraph (b) proposes to allow the movement of cars with such defects known to exist upon arrival at its destination to be moved only to the nearest forward location where repairs may be performed and restricts the car from being loaded or unloaded while being so moved. However, to ensure the safe operation of trains operating in ECP brake mode, operators are reminded that, under the proposal, the inclusion of such defective cars cannot make the train have less than ninety-five percent effective or operative brakes.

Paragraph (b) also proposes that a car with ineffective or inoperative ECP brakes shall be tagged in accordance with § 232.15(b). FRA believes that § 232.15(b) should equally apply to trains operating in ECP brake mode and should be a prerequisite for the movement from the initial terminal of any car with defective brakes. Section 232.15(b) contains the specific requirements regarding the tagging of equipment found with defective brake components and recognizes that the industry may attempt to develop some type of automated tracking system capable of retaining the information required by that section and tracking defective equipment electronically. Thus, paragraph (b), through § 232.15(b), proposes to permit the use of an automated tracking system in lieu of directly tagging the equipment if the automated system is approved for use

by FRA. FRA continues to believe that these provisions are necessary to ensure the agency's ability to monitor such systems and potentially prohibit the use of the system if it is found deficient. The proposed rule makes clear that, by ensuring application of section 232.15(b) to ECP brake systems, an automated tracking system approved for use by FRA be capable of being reviewed and monitored by FRA at any time. This paragraph also notifies the railroads that FRA reserves the right to prohibit the use of a previously approved automated tracking system if FRA subsequently finds it to be insecure, inaccessible, or inadequate. Such a determination would have to be in writing and include the basis for taking such action.

Paragraph (c) proposes permitting, with certain limitations, trains operating in ECP brake mode to move cars equipped with conventional pneumatic brakes. If a freight car equipped with only conventional pneumatic brakes would have effective and operable brakes in a train equipped with a ''stand-alone'' conventional pneumatic brake system, FRA proposes to permit a freight train operating in ECP brake mode to move such a car. If a car has defective conventional pneumatic brakes—which would be ineffective or inoperative in a train with a ''stand-alone'' conventional pneumatic brake system—FRA also proposes to permit its movement by a freight train operating in ECP brake mode, but only if the movement is made in accordance with § 232.15. By referring to § 232.15, paragraph (c) intends to, amongst other things, include the exceptions delineated in paragraph (k) and limit the movement of such cars to the nearest location where repairs can be made. Paragraph (c) also reminds regulated parties to comply with the tagging requirements of § 232.15(b) for the same reasons as paragraph (b). FRA notes that the inclusion of cars with defective or non-defective conventional pneumatic brakes into a train operating in ECP brake mode shall not cause the train to have less than ninety-five percent effective and operative brakes in accordance with paragraph (a). FRA believes that permitting a limited inclusion of cars equipped with conventional pneumatic brakes will provide some flexibility as operators transition their fleets from conventional pneumatic to ECP brake systems while ensuring a satisfactory level of safety.

Once an ECP brake system detects that the train has less than eight-five percent operative brakes, AAR standard S–4200 requires an automatic and immediate full service brake application. Paragraph (d) mirrors S–4200 by requiring a train operating in ECP brake mode to cease moving once less than eight-five percent of the train's cars have effective and operative brakes. In other words, under paragraph (d), no train shall move with more than fifteen percent of its brakes being defective or otherwise inoperative or ineffective. Recognizing, however, that foundation brake rigging defects may not be detected by the electronic system, and that calculation of the percentage may require an accurate manual entry of the total cars in the train by the train crew, FRA proposes paragraph (d) to continually ensure the safe operation of trains operating in ECP brake mode with ineffective or inoperative brakes.

Although there is no explicit statutory limit regarding the number of cars with inoperative brake equipment that may be hauled in a train, the fifteen percent limitation is a longstanding industry and agency interpretation of the hauling-for-repair provision currently codified at 49 U.S.C. 20303, and has withstood the test of time. This interpretation is extrapolated from another statutory requirement which permits a railroad to use a train only if ''at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in a train.'' 49 U.S.C. 20302(a)(5)(B). As originally enacted in 1903, section 20302, also granted the Interstate Commerce Commission (ICC) the authority to increase this percentage, and in 1910 the ICC issued an order increasing the minimum percentage to 85 percent. *See* 49 CFR 232.103(e), which codifies the ICC order. FRA believes that if the rule is read in its entirety there should be no confusion as to the movement of defective equipment, and that this provision merely sets an outside limit on the percentage of cars that may be hauled in any train with inoperative brakes. Consequently, FRA will continue to require that equipment with inoperative air brakes make up no more than 15 percent of any train.

FRA acknowledges that § 232.103(e) already prevents a train's movement ''if less than 85 percent of the cars in that train have effective and operative brakes.'' However, FRA has also stated that § 232.103(e) ''contains a clear and absolute prohibition on train movement if more than 15 percent of the cars in a train have their brakes cut out or have otherwise inoperative brakes.'' Because ECP brake systems are designed to automatically stop the train whenever and wherever the brake system has less than 15 percent operative brakes, FRA recognizes that some flexibility is needed to ensure that such trains are not stranded on the main track. To provide flexibility in those rare instances where a train experiences a penalty brake application as a result of having less than 85 percent operative brakes, paragraph (d) proposes to include requirements to ensure the safe movement of such trains. FRA recognizes the need for some trains operating in ECP brake mode to continue to an appropriate repair facility or nearest siding after experiencing a penalty brake application. Since ECP brake implementation is in its infant stages, FRA acknowledges that a railroad may not initially have a significant number of repair facilities beyond the initial terminals of ECP equipped cars. Accordingly, paragraph (d) proposes to permit limited movement of such trains for repair or consist modification purposes. In any event, in light of the Class I inspection required under proposed § 232.607 and an ECP brake system's continuous monitoring and diagnostics functions, FRA believes that trains operating in ECP brake mode will rarely, if ever, reach fifteen percent inoperative or ineffective brakes. However, FRA believes that paragraph (d)—in an abundance of caution and in anticipation of such a possibility occurring—ensures safe and efficient operations. In order to move a train operating in ECP brake mode that experiences a penalty brake application (i.e., an automatic and immediate emergency or full brake application made by the ECP brake system in accordance with the current AAR standards) due to having less than 85 percent effective and operative brakes, proposed paragraph (d) would require the train crew to perform a visual inspection of the entire train, ensure the safe operation of the train, and determine that it is safe to move the train.

Under the current regulations, visual inspections are generally performed when moving defective equipment since a ''qualified person'' must determine that the car is safe to move. It is FRA's understanding that most, if not all, railroads require a crew member to make a visual inspection of a car when a problem occurs en route. A proper visual inspection ensures that the brakes are cut out and eliminates the possibility of dragging or stuck brakes. A dragging or loose part or piece of equipment can find its way under a wheel, causing a derailment. A brake

that will not release—due to bent or fouled brake rigging or a problematic control valve—will cause the wheel to slide. A sliding wheel will not properly traverse a switch or cross-over, setting up a potential derailment. A sliding wheel may also cause a severe flat spot to occur on the wheel, which can also lead to a derailment. By requiring that the train crew ensure the safe operation of the train and determine that it is safe to move the train, FRA intends to make clear that it is the railroad's responsibility, through its crew, to do whatever is necessary to ensure safe train operation under the flexibility provided by paragraph (d). Any deviation from the requirements under paragraph (d) while moving a train with less than eight-five effective or ineffective brakes would pose a significant safety hazard and violate the rule.

In addition, under paragraph (d), the train's subsequent movement must be made in a restricted ECP brake Switch Mode to the nearest forward location where necessary repairs or changes to the consist can be made. Under AAR Standard S–4200 § 4.2.6.2.2, the speed of an ECP brake equipped train in Switch Mode shall not exceed 20 mph. The purpose of the 20 mph restriction, among Switch Mode's other restrictions, is to ensure the safe movement of the train with less than ideal brake operations while allowing the train to operate to a location where defective braking systems can be repaired or where cars can be added or removed from the train so that it will have at least eighty-five percent effective and operative brakes.

Paragraph (e) proposes to permit trains operating in ECP brake mode with defective ECP brakes to be used or hauled without civil penalty liability under part 232 to its destination, not to exceed 3,500 miles. Such defects must be found for the first time during a Class I brake test or en route. As previously mentioned, FRA believes that a train operating in ECP brake mode can safely continue to its destination with some ineffective or inoperative brakes. Accordingly, paragraph (e) proposes that all such trains be permitted to travel to its destination, not to exceed 3,500 miles, without incurring civil penalty liability in relation to the use of those brakes. Paragraph (e) also proposes that this civil penalty immunity be extended to such trains with ECP brake defects found at the initial terminal. If such defects are found after a train is put together in preparation for its next departure, it may be overly burdensome to require that the train be taken apart for repair. If a brake repair may be performed without taking the train apart, FRA acknowledges that the repair may cause undue delay. If the ECP brake defect is found at the location where a Class I inspection is performed, FRA believes that such burdens and delays may be avoided in light of the increased safety afforded by ECP brake systems.

FRA believes that this flexibility needs to be afforded differently to defects that are known to exist upon a car's arrival at its destination or at a location where a Class I brake test will be required on the train than to defects found for the first time at the location where a Class I brake test is performed. If a freight car equipped with an ECP brake system is known to have arrived with ineffective or inoperative brakes at the location of a train's initial terminal or at a location where a Class I brake test is required under § 232.607(b), that car is subject to the limitations in paragraph (b), not paragraph (e). Paragraph (b) intends to ensure that known defects be repaired before continued use and to prevent trains operating in ECP brake mode from traveling indefinitely without repairing their defective ECP brakes. On the other hand, by proposing paragraph (e), FRA recognizes the burden placed on operators to comply with such a rule when it discovers the defect when it is in the process of putting a train together or after a train is already put together and inspected. Paragraph (e) intends to recognize that burden by treating the train similarly to a train that detects a defective ECP brake while it is en route.

Paragraph (f) proposes providing limited flexibility for trains operating in ECP brake mode with a non-brake safety appliance defect on an ECP brake equipped car. To enjoy such flexibility under paragraph (f), the car may only be used or hauled to the nearest forward location for repairs. As noted above, in light of the increased safety levels afforded by ECP brake system technologies, FRA proposes to allow trains operating in ECP brake mode with defective ECP brakes to travel to its destination, not to exceed 3,500 miles. FRA does not believe it prudent to provide the same level of flexibility to cars operating in ECP equipped trains with non-brake safety appliance defects, since an ECP brake system's increased safety level does not reduce the dangers of such defects. However, FRA does believe that flexibility should be afforded to such equipment hauled directly to the nearest forward repair location. To require the hauling of ECP brake equipment to the nearest location where necessary repairs can be effectuated, rather than the nearest forward location, could create unnecessary safety hazards. As there will only be a limited number of ECP brake equipped trains in operation at any given time, the ability to switch cars from one ECP train to another, merely for the purposes of getting the car to a closer repair facility, will be severely limited. Rather than requiring ECP brake equipped cars to be hauled in non-ECP brake trains, where their brakes will be inoperative, FRA believes it is safer to permit the car to continue in the ECP brake equipped train with operative brakes to the next forward location where the necessary non-brake safety appliance repairs can be made.

In the event trains must include cars equipped with brake systems not compatible with the train's brake system, FRA proposes requirements to ensure the safe operation of such trains. FRA proposes to allow a train operating with a conventional pneumatic brake system—regardless of whether it is a train with ''stand-alone'' conventional pneumatic brakes or an ECP brake equipped train operating in conventional pneumatic brake mode—to include cars with stand-alone ECP brake systems. To maintain an acceptable level of safety, however, FRA proposes that such trains must have at least 95 percent effective and operative brakes at the conclusion of a Class I brake test, inclusive of all cars regardless of braking systems. Further, to meet the same level of safety intended by 49 CFR 232.103(d), FRA proposes to continue to require that the train have 100 percent effective and operative conventional pneumatic brakes at the Class I brake test site when operating in conventional pneumatic mode.

Accordingly, paragraph (g) proposes to allow trains equipped with a conventional pneumatic brake system—or with ECP brake systems and operating in conventional pneumatic brake mode—to operate with freight cars equipped with stand-alone ECP brake systems under limited circumstances. Under paragraph (g), any such train not in compliance with those circumstances shall not be operated. The purpose of these limitations is to ensure the safe operation of such trains that contain cars with incompatible stand-alone ECP brake systems. FRA understands that some trains operating with conventional pneumatic brakes may need to carry cars with incompatible stand-alone ECP brake systems, especially when the implementation of ECP brake system technology is in its infant stages. For instance, FRA anticipates that a need may arise to move a new ECP brake equipped car in a train operating with conventional pneumatic brakes from the

car building facility or a repair shop to a location where the railroad operates ECP brake equipped trains. FRA also anticipates that a dual mode ECP brake system operating in ECP brake mode may incur a malfunction—such as a broken train line cable or locomotive controller—forcing the operator to switch the train's operation to conventional pneumatic brake mode. As long as the train's total number of cars with ineffective or inoperative brakes does not fall below the threshold percentage proposed by paragraph (g)—via reference to paragraph (d)—FRA believes that the train may safely include cars with incompatible stand-alone ECP brake systems.

Paragraph (g) includes requirements for the subject train and each of its stand-alone ECP brake equipped cars. For such a train to operate, it must comply with the minimum percentage of operative brakes required by paragraph (h) when at an initial terminal—which will be discussed below—or paragraph (d) when en route for the same reasons discussed in paragraph (d). Under paragraph (g), a stand-alone ECP brake equipped car in a train operating with conventional pneumatic brakes can only be moved for delivery to a railroad receiving the equipment or to a location where the car may be added to a train operating in ECP brake mode. Otherwise, the movement of the car is restricted to the nearest available location where necessary repairs can be effectuated. In addition, such cars must be tagged in accordance with § 232.15(b) for the same reasons as stated for the analysis of paragraph (b) and placed in the train in accordance with § 232.15(e). Section 232.15(e) contains the requirements regarding the placement of cars in a train that have inoperative brakes. The requirements contained in that paragraph are consistent with the current industry practice and are part of almost every major railroad's operating rules. By incorporating § 232.15(e) by reference, paragraph (g) proposes to prohibit the placing of a vehicle with inoperative brakes at the rear of the train and the consecutive placing of more than two vehicles with inoperative brakes, as test track demonstrations have indicated that when three consecutive cars in a train operating with conventional pneumatic brakes have their brakes cut-out, it is not always possible to obtain an emergency brake application on trailing cars. To remain consistent with existing industry practice, paragraph (g) proposes, by referencing § 232.15(e), to require that such equipment shall not be placed in a train if it has more than two consecutive individual control valves cut out or if the brakes controlled by the valve are inoperative.

Paragraph (h) proposes additional requirements for freight trains equipped and operating with conventional pneumatic brakes when departing an initial terminal with freight cars equipped with stand-alone ECP brake systems. On such trains, paragraph (h) proposes to require that each car equipped with conventional pneumatic brake systems have effective and operative brakes. Paragraph (h) proposes to allow the train to depart its initial terminal with ninety-five percent effective and operative brakes. The five percent of cars with potentially defective brakes may only be cars equipped with stand-alone ECP brake systems. All cars equipped with dual mode ECP brake systems must operate in conventional pneumatic brake mode and have effective and operative conventional pneumatic brakes.

Various paragraphs of proposed § 232.609 require the tagging of defective equipment. Paragraph (i) proposes to provide for the electronic tagging of defective ECP brake equipment when being moved in a train operating in ECP brake mode. FRA recognizes that § 232.15(b) already provides requirements for electronic tagging of defective equipment. However, in view of the ECP brake system's unique characteristics, it is not entirely clear how § 232.15(b) would appropriately apply to electronic records developed, retained, and maintained by ECP brake systems. Accordingly, paragraph (i) contains the proposed criteria for determining whether an ECP brake system complies with § 232.15(b). In order for an ECP brake system to provide electronic tagging of equipment with defective safety appliances, the ECP brake system must provide appropriate, constant, and accurate information to the crew via a display in the cab of the lead locomotive, and ensure that the information is securely stored and is accessible to FRA and appropriate operating and inspection personnel.

To allow electronic tagging of defective ECP brake equipment, paragraph (i) proposes to ensure that the train crew be notified of such defects. FRA believes that the most logical and efficient communications medium is the ECP brake system's display monitor in the lead locomotive cab. FRA also believes that any such notification should include descriptive information suitable to identify the defect and its location in the train consist. FRA acknowledges that locomotive engineers may be distracted or subjected to information overload by multiple monitors or displays in the locomotive cab, thus potentially endangering the safe operation of the train. At this time, FRA does not have sufficient information to propose rules concerning display or monitor placement or the merging of various data into a smaller number of displays. In any event, FRA seeks comments on this issue.

To ensure the integrity of electronic tagging, the ECP brake system must securely store the information. FRA seeks comment on how secure a system must be. While the information must be secure, it must also be accessible for safety and oversight purposes. Paragraph (i) makes clear that an automated tracking system approved for use by FRA and its secured information must be capable of being reviewed and monitored by FRA at any time. The information should also be accessible to subsequent train crews that require notification of defects. FRA acknowledges that some railroads may also desire to use the ECP brake system to electronically tag defective non-ECP brake equipment. FRA anticipates that such electronic tagging must be manually entered into the system. FRA seeks comments on whether the proposed rules should include provisions allowing for the manual input of non-ECP brake defects into ECP brake systems for electronic tagging purposes. FRA also seeks comments on what requirements and allowances should be made in consideration of that interest, including means to associate or merge ECP brake system information with information not monitored electronically by the ECP brake system.

Paragraph (j) proposes that railroads adopt and comply with written procedures governing the movement of defective equipment. The procedures must comply with the related regulatory requirements, including those proposed in these rules. FRA intends for each railroad to develop appropriate procedures regarding its handling and repair of defective equipment containing ECP brake systems or hauled in trains operating in ECP brake mode. FRA acknowledges that many railroads may already have such procedures in place. FRA believes that the establishment of these procedures is the most effective means by which to minimize the possibility of future accidents caused by the movement of defective equipment on cars and trains equipped with ECP brake systems or operating in ECP brake mode. Given the introduction of new technology and its partial incompatibility with existing systems, FRA believes the need for

adoption and compliance with such procedures is critical for continued safety in the rail industry.

To ensure compliance with the proposed requirements concerning the performance of ECP brake system repairs, paragraph (j) proposes to require railroads to submit to FRA a list identifying locations where such repairs may be made. FRA believes that the list should encompass a sufficient number of locations to ensure that Class I brake tests are performed at appropriate intervals and that trains equipped with ECP brake systems do not travel further than their destination or 3,500 miles without being inspected and repaired in Class I inspection and repair facilities. If a railroad adds or removes any repair facility from its system, paragraph (j) proposes that the railroad amend or modify that list by timely notifying FRA of those changes.

Paragraph (k) proposes explicit exceptions to other portions of part 232. Paragraph (k) proposes that §§ 232.15(a)(2) and (a)(5) through (a)(7) not apply to freight cars and freight trains with ECP brake systems. These sections generally require that equipment with defective safety appliances be repaired at the location where they are first discovered to be defective or that they be moved only to the nearest available location where necessary repairs can be performed. As noted above, FRA believes that freight cars equipped with ECP brakes and freight trains operating in ECP brake mode need to be provided some flexibility in being handled for repair and when moving equipment with defective safety appliances. The provisions contained in § 232.15(a) for which FRA is proposing an exception would, in many circumstances, frustrate the purpose of FRA's proposal and ignore the safety advances provided by ECP braking systems.

Paragraph (k) also proposes to except § 232.15(a)(8), which prohibits the movement of a defective car or locomotive in a train required to receive a Class I brake test at that location. As discussed in detail above, FRA proposes to allow a leave its initial terminal with only ninety-five percent operative brakes after a Class I brake test. Similarly, § 232.103(d) prohibits a train from departing from its initial terminal with any inoperative or ineffective brakes, but paragraph (a) proposes to allow a train operating in ECP brake mode to depart from its initial terminal with ninety-five percent effective and operative brakes under certain circumstances. Paragraph (a) implicitly excepts trains operating in ECP brake mode from § 232.103(d). Paragraph (k) intends to clearly and explicitly except § 232.103(d). An explicit exception in this rule does not imply that there are no independent and implicit exceptions. Finally, § 232.103(e) ''contains a clear and absolute prohibition on train movement if more than 15 percent of the cars in a train have their brakes cut out or have otherwise inoperative brakes,'' thus preventing a train's movement ''if less than 85 percent of the cars in that train have effective and operative brakes.'' Due to relief proposed by this section, however, the strict limits imposed by § 232.103(e) would no longer be applicable to trains regulated under these proposed rules. Accordingly, paragraph (k) proposes excepting § 232.103(e).

Section 232.611 Periodic Maintenance

FRA intends that all unexcepted rules under part 232 apply to ECP brake operations. For the purposes of further clarity, however, paragraph (a) reminds the operators of equipment with ECP brake systems to comply with the maintenance requirements contained in § 232.303(b) through (d), which require the performance of certain tests and inspections whenever a car is on a shop or repair track. FRA continues to believe that a repair or shop track provides an ideal setting for railroads to conduct an individualized inspection on a car's brake system to ensure its proper operation. FRA also continues to believe that such inspections are necessary to reduce the potential of overlooking cars with excessive piston travel during the performance of ordinary brake inspections. If any problems are detected at that location, the personnel needed to make any necessary corrections are already present. Furthermore, performing these inspections at this time ensures proper operation of the cars' brakes and eliminates the potential of having to cut cars out of an assembled train and, thus, should reduce inspection times and make for more efficient operations.

FRA continues to believe that §§ 232.303(b) and (c) should apply to all operations, including those with ECP brake systems. Section 232.303(b) requires testing of each car on a shop or repair track to determine that its air brakes apply and remain applied until a release is initiated. If the brakes fail to apply or remained applied until a release is initiated, the car must be repaired and retested. Section 232.303(c) requires piston travel to be inspected and, if necessary, adjusted. FRA intends for this to be accomplished in accordance with the stencil or badge plate on cars equipped with ECP brakes.

FRA also continues to believe that § 232.303(d) should apply to all operations, including those with ECP brake systems. Section 232.303(d) lists brake system components requiring inspection prior to releasing a car from a shop or repair track. This section requires inspection of a car's hand brakes, angle cocks to ensure proper positioning to allow maximum air flow, and brake indicators, if equipped, to ensure their accuracy and proper operation. A periodic inspection is an ideal time for the railroad to inspect these items while imposing the least burden on the railroad's inspection and repair forces.

In addition to requiring continued compliance with §§ 232.303(b) through (d), paragraph (a) proposes to require further inspections of freight cars equipped with ECP brake systems prior to release from a shop or repair track. These additional inspections afford the inspector the opportunity to look at each car more thoroughly and take into consideration ECP brake systems' unique characteristics. For instance, while § 232.303(d) requires inspectors to ensure that brake pipes are securely clamped, paragraph (a) proposes the equivalent for ECP brake systems by requiring the secured clamping of ECP brake system wires. Accordingly, paragraph (a) proposes requiring inspectors to check the ECP brake system's wiring and brackets, electrical connections, electrical grounds and impedance, and any car mounted ECP brake system component. During such inspections, inspectors are expected to look for problems such as frayed wiring, loose or damaged brackets, and wires that have become loose due to a fallen bracket. FRA believes that a missing bracket may not cause concern during a regular train yard inspection or Class I brake test and FRA has proposed requiring shop or repair track inspections of such ECP brake related components to ensure their safe operation.

Paragraph (b) proposes requiring railroads to submit periodic single car air brake test procedures to FRA for approval and paragraph (c) proposes that railroads comply with such submitted and approved procedures whenever they perform a single car air brake test. FRA must be given an opportunity to review and comment on any revision of the procedures by which these tests are performed to ensure that there is no degradation in safety resulting from any such modification and to ensure consistency in how the tests are performed. FRA notes that the review and approval proposed by paragraph (b) are necessary to prevent

railroads from making unilateral changes to the test procedures. Paragraph (b) proposes to require the industry to follow the special approval process contained in § 232.17 in order to initially submit the procedures to FRA for approval. FRA understands that AAR and ECP brake manufacturers are currently in the process of developing single car air brake test procedures for ECP brake equipped freight cars. Should such procedures be formalized in an AAR approved and published standard prior to issuance of a final rule in this proceeding, FRA will consider incorporating that standard into the final rule. Paragraph (c) proposes to require that single car air brake tests be performed upon the occurrence of any of the events identified in § 232.305, except for § 232.305(b)(2). Section 232.305(b)(2) requires railroads to perform a single car air brake test when a car is on a shop or repair track for any reason and has not received a single car air brake test within the previous 12-month period. The single car air brake test is critical to ensuring the safe and proper operation of the brake equipment on the Nation's fleet of freight cars. When FRA issued § 232.305(b)(2), the single car air brake test was the sole method by which air brake equipment on freight cars is periodically tested to identify potential problems before they result in the brake's becoming inoperative. Due to the ECP brake system's ability to continuously monitor the condition of a car's air brakes, FRA believes that less frequent single car air brake tests are justified on such equipment.

FRA acknowledges that railroads may retrofit ECP brake systems on existing cars equipped with conventional pneumatic brake systems. While § 232.305(e) requires a single car air brake test on each new or rebuilt car prior to placing or using it in revenue service, it is unclear whether this rule applies to cars retrofitted with ECP brake systems. Accordingly, to ensure the proper and safe operation of cars with newly installed ECP brake systems, paragraph (d) proposes to require the performance of a single car air brake test prior to returning the car to revenue service. FRA believes that it is essential for retrofitted cars to receive this test prior to returning to revenue service in order to ensure the proper operation of the vehicle's new brake system. Most railroads already require this attention when installing a new brake system; thus the cost of this requirement is minimal and merely incorporates the industry's current best practices.

FRA acknowledges that, after receiving approval of the single car air brake test standard from FRA in accordance with paragraph (b), a railroad or an industry representative may—through its experience—subsequently determine better procedures applicable to single car air brake tests of cars equipped with ECP brake systems. Accordingly, FRA recognizes that the industry may find it necessary to modify the single car air brake test procedures from time to time. Section 232.307 provides regulatory procedures for those seeking modification of an approved single car air brake test procedure. Paragraph (b) proposes extending the application of § 232.307 to single car air brake test procedures for cars equipped with ECP brake systems.

FRA believes that § 232.307 provides the industry with a quick and efficient procedure to seek modification of an incorporated or approved testing procedure and provides both FRA and other interested parties an opportunity to review potential changes prior to their becoming effective. The process under § 232.307 permits the industry to modify the single car air brake test procedures and permits those modifications to become effective 75 days from the date that FRA publishes the requested modification in the **Federal Register**, if no objection to the requested modification is raised by either FRA or any other interested party. The process allows FRA and other interested parties 60 days to review and raise objections to any proposed modification requested by the industry and submitted to FRA. FRA believes the process established in § 232.307 will meet the needs of AAR and the industry to expeditiously modify the single car air brake test procedures required by and approved under paragraph (b).

FRA continues to believe that, for the process to work at optimum efficiency, the AAR and the industry would be best served if they ensure that there is open communication regarding any modifications with both FRA and the representatives of affected employees prior to requesting any modification of the procedures. This will ensure that interested parties are fully informed of any potential modification and their concerns are addressed or allayed before a request for modification is submitted to FRA. This information and dialogue will eliminate the potential for objections being submitted when the requested modification is officially sought.

FRA acknowledges that the self-monitoring capabilities of ECP brake systems may eliminate the need to perform single car air brake tests on a time-specific basis. Accordingly, paragraph (f) proposes to except § 232.305(b)(2) as it applies to single car air brake tests for cars with stand-alone ECP brake systems. Since cars with dual mode ECP brake systems include all of the components of a conventional pneumatic brake system and may be operated in conventional pneumatic brake mode at any time, FRA does not intend paragraph (f) to provide those cars relief from section 232.305(b)(2). At this time, FRA does not believe sufficient information exists to completely eliminate the need to conduct periodic single car air brake tests on ECP brake equipped cars.

Paragraph (f) also proposes to except the application of § 232.305(f) to cars equipped with stand-alone ECP brake systems. Section 232.305(f) concerns cars that had received their last single car air brake tests prior to January 1, 2001. Section 232.305(e), incorporated by reference from paragraph (c), requires that all new or rebuilt ECP brake equipped cars receive a single car air brake test prior to being placed or used in revenue service. Proposed paragraph (d) requires a single car air brake test be performed on all cars retrofitted with ECP brake systems prior to being placed or used in revenue service. Thus, the last time a stand-alone ECP brake equipped car would have received a single car air brake test would have been after it was built, rebuilt, or retrofitted. Accordingly, § 232.305(f) would no longer be applicable. For similar reasons, FRA also seeks comments and information on whether § 232.305(f) should be eliminated altogether.

Section 232.613 End-of-Train Devices

Current FRA regulations specify design and performance standards for one-way and two-way EOT telemetry devices, which, at a minimum, have the capability of determining rear-of-train brake pipe pressure and of transmitting this information by radio to a receiving unit in the controlling locomotive. Most rear units in service are battery operated and also incorporate a rear end marker required under 49 CFR part 221. Optional features include transmission of information regarding rear end motion and battery status. Most units operate on the same ultra high frequency (UHF), but each rear unit has a discrete identification code which must be recognized by the HEU before the message is acknowledged. The more modern two-way EOT device, in addition to the features of the one-way EOT device, has the ability of activating the emergency air valve at the rear of the train upon receiving an emergency brake application command from the HEU. This is a desirable feature in event

of a blockage in the brake pipe that would prevent the pneumatic transmission of the emergency brake application throughout the entire train.

Provisions governing the use of one-way EOT telemetry devices were initially incorporated into the power brake regulations in 1986. Pursuant to the Rail Safety Enforcement and Review Act, Pub. Law No. 102–365 (Sept. 3, 1992), which amends the Federal Rail Safety Act (FRSA) of 1970 (45 U.S.C. 421, 431 et seq.), FRA held rulemakings to amend the power brake regulations, including those concerning one-way and two-way EOTs. 62 FR 278 (Jan. 2, 1997); 66 FR 4104 (Jan. 17, 2001). The resulting regulations, contained in subpart E of part 232, specify the requirements related to the performance, operation, and testing of EOT devices for conventional pneumatic braking.

The new ECP–EOT devices—which must comply with AAR standards such as S–4200 and S–4220—will provide more and more varied functions than the EOT devices used on trains with conventional pneumatic brakes. In addition to serving as the final node on the ECP brake system's train line cable termination circuit and as the system's ''heart beat'' monitoring and confirming train, brake pipe, power supply line, and digital communications cable continuity, the ECP–EOT device transmits to the HEU a status message that includes the brake pipe pressure, the train line cable's voltage, and the ECP–EOT device's battery power level. Since the ECP–EOT device—unlike a conventional EOT device—will communicate with the HEU exclusively through the digital communications cable and not via a radio signal, it does not need to perform the function of venting the brake pipe to atmospheric pressure to engage an emergency brake application. However, ECP–EOT devices do verify the integrity of the train line cable and provide a means of monitoring the pressure and gradient, providing the basis for an automatic—rather than engineer-commanded—response if the system is not adequately charged. In the case of ECP brakes, the brake pipe becomes a redundant—rather than primary—path for sending emergency brake application commands. Under certain communication breakdowns between the ECP–EOT device, the HEU, and any number of CCDs, the system will self-initiate an emergency brake application.

FRA acknowledges that ECP–EOT devices, with their additional and changed features, may not comply with the rules under subpart E. FRA, however, is unclear what additional unique and varied features manufacturers of ECP–EOT devices may want to include beyond the functions specified in the AAR standard. Accordingly, FRA proposes in paragraph (a) that a railroad or a duly authorized representative of the railroad industry submit to FRA proposed design, testing, and calibration standards related to ECP–EOT devices used on freight trains operating in ECP brake mode. Paragraph (a) proposes that the submission comport with the special approval procedures contained in § 232.17 and be subject to FRA approval. FRA acknowledges that ECP–EOT devices may not require calibration. FRA seeks comments and information on this proposal and issue.

Once FRA approves those standards, paragraph (b) requires that each railroad operating trains in ECP brake mode adopt and comply with those standards. A railroad shall not operate a train in ECP brake mode until after FRA approves those standards. Paragraph (c) further ensures that ECP brake equipped trains properly connect and use an ECP–EOT device approved and complying with paragraphs (a) and (b) of this section.

Because paragraph (a) proposes requirements for ECP–EOT device design, testing, and calibration standards applicable only to ECP brake systems and because subpart E of part 232 contains requirements not necessarily applicable to ECP–EOT devices, paragraph (d) proposes to except trains operating in ECP brake mode from having to comply with subpart E of part 232.

XII. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a Regulatory Analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Access to the docket may also be obtained electronically through the DOT Docket Management System Web site at *http://dms.dot.gov* until September 28, 2007, and the Federal eRulemaking Portal at *http://www.regulations.gov* after September 28, 2007. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2006–26175.

The Regulatory Analysis prepared by the FRA in conjunction with this NPRM contains many assumptions and analyses on which we specifically request comments from interested parties. These specific questions can be found throughout that document, particularly in sections II.B., V.D., V.E., V.F., and VI.A. Anyone who wishes to examine the analysis and provide relevant data or arguments may request a copy of the Regulatory Analysis through the person listed under **FOR FURTHER INFORMATION CONTACT** above. FRA invites comments on the Regulatory Analysis.

For purposes of analysis, FRA has assumed that the proposed rule, if adopted, would support business decisions by Class I railroads to convert unit train service, such as coal and intermodal, to ECP brake operations over a 10-year period. This type of service is characterized by intensive utilization of assets and is reasonably discrete in terms of operational requirements. Although carload service is dispersed over the national rail network, unit train service tends to be concentrated in certain corridors. Locomotives are or could be dedicated to this service (e.g., as in the extensive use of high traction alternating current (AC) locomotives in coal service). FRA believes that, as costs and benefits are validated and the technology's market enjoys economies of scale, additional markets will benefit from ECP brake technology. However, based on available information, FRA is not able to determine whether or under what circumstances that may occur.

If the industry was to take advantage of the proposed relief to the extent estimated, it would cost it approximately $1.5 billion (discounted at 7%). The largest portion of these costs, $1 billion, is the cost to convert freight cars to ECP brakes and the remaining costs relate to locomotive conversion and training. The total benefits of the proposed rule are approximately $3.2 billion (discounted at 7%). Of those benefits, the $1.1 billion in regulatory relief or the $1.2 billion in fuel savings almost individually pay the costs or together substantially exceed the costs. The remaining benefits include wheel replacement savings and safety benefits.

The information currently available suggests that additional substantial benefits not included in the $3.2 billion referenced above may be realized. The most significant benefit of conversion of mainline corridors to all-ECP brake service is enhanced capacity, without the need for major new equipment or infrastructure investment. Although the FRA cannot predict the specific effect that ECP brakes will have in increasing velocity across the national rail network, the FRA believes that the adoption of ECP brake technology will increase train speed and this hypothesis is supported by the BAH analysis. Given sharply growing demand for rail freight service, and based on the enhanced features that ECP brake systems offer, including (1) reduced stopping distances, (2) shorter start times, (3) reduction of undesired emergencies, (4) continuous brake pipe charging, (5) graduated brake application and release, (6) self-diagnostic train management, and (7) potential increase in the total number of cars per train, an increase in average train velocity will likely result. For instance, the BAH report cites a Union Pacific Railroad (UP) estimate that, for each 1 mph (or 5 percent) improvement in its overall system average velocity, UP saves 250 locomotives and 5,000 freight cars that would otherwise be required. At a cost of $2 million per locomotive and an average of $50,000 per freight car, this savings represents $750 million for UP alone. The UP fleet is representative of the industry's Class I railroads and comprises approximately one-third of all Class I railroad owned locomotives and one-fourth of all Class I railroad owned freight cars. Assuming that other Class I railroads have similar equipment utilization rates, it could be possible to extrapolate the $750 million in UP savings to the other Class I railroads, which could realize $2.5 billion in savings from a 1 mph increase in network velocity. Any savings realized would increase accordingly if there are speed gains of greater than 1 mph.

However, the unit and unit-like trains covered by this analysis only cover a portion of the industry-wide train total. Given that unit coal trains, which are among the slowest moving trains on any given network, could experience velocity gains significantly greater than 1 mph and that all Class I railroads transport a significant amount of coal on their main lines, this estimate is likely a lower bound estimate. Thus, due to the number and variability of factors that would determine the actual level of savings realized due to network velocity improvements, such benefits are not included in the total benefits. The expected benefits of ECP braking technology appear to justify the investment, provided that the conversion is focused first on the high-mileage, unit and unit-like train services that would most benefit from its use.

As presented in the following tables, FRA estimates that the present value (PV) of the total 20-year benefits and costs which the industry would be expected to incur if it elected to comply with the alternative requirements proposed in this rule is $3.2 billion and $1.5 billion, respectively:

TOTAL TWENTY-YEAR BENEFITS AND DISCOUNTED BENEFITS

	Benefits	3% Discount	7% Discount
Regulatory Relief	$2,485,337,443	$1,726,315,620	$1,112,844,715
Rail Accident Risk Reduction	228,105,462	158,224,002	101,783,196
Highway-Rail Accident Risk Reduction	14,036,032	9,736,101	6,263,034
Fuel Savings	2,745,000,000	1,904,052,986	1,224,849,552
Wheel Replacement Savings	1,601,250,000	714,495,572	714,495,572
Total Benefits	7,073,728,937	4,909,026,194	3,160,236,069

TOTAL TWENTY-YEAR COSTS AND DISCOUNTED COSTS

	Costs	3% Discount	7% Discount
Freight Car Costs	$1,455,272,000	$1,241,376,534	$1,022,122,156
Locomotive Costs	485,520,000	414,158,408	341,008,931
Employee Training	196,425,710	161,710,759	96,152,211
Total Costs	2,137,217,710	1,817,245,701	1,459,283,298

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this proposed rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available on the DOT Docket Management System Web site at *http://dms.dot.gov* until September 28, 2007, and the Federal eRulemaking Portal at *http://www.regulations.gov* after September 28, 2007. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2006–26175.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small

entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. See 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad, shipper, or contractor is a small entity. FRA uses this alternative definition of ''small entity'' for this rulemaking.

Implementation and use of ECP brake technology under the proposed rules is voluntary. In addition, the impacts for those who may choose to implement and use ECP brake technology and comply with the proposed rules are primarily a result of the conversion to ECP brake technology. These costs include locomotive crew and inspector training, freight car conversion costs, and locomotive conversion costs. The AISE developed in connection with this NPRM concludes that this NPRM will only impact four Class I railroads and therefore should not have any economic impact on small entities. Smaller railroads that carry unit and unit-like commodities often operate and transport trains owned by other parties over relatively short distances and turn them over to larger systems that, in turn, transport those trains relatively long distances to their ultimate destination or to another small railroad for final delivery. The FRA recognizes that small entities may, in some cases, be involved in specific route segments for trains that originate or terminate on a Class I railroad. In these cases, the cars involved are more likely to be owned or provided by shippers or a Class I railroad. Mutual support arrangements and shared power practices are likely to ensure that the smaller railroad will not require ECP brake equipped trains for this service. Further, FRA anticipates that ECP brake equipped train operations will be limited to long hauls of commodities such as intermodal, coal, ore, non-metallic minerals, motor vehicle parts, and grain. Since small railroads do not handle such commodities, they will not likely receive large blocks of cars equipped with ECP brakes from Class I railroads.

Since FRA does not expect small railroads to convert to ECP brake technology within the period of the analysis, this proposal is not anticipated to affect any small entities. Thus, FRA certifies that this NPRM is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

BILLING CODE 4910–06–P

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Burden Cost
229.27 - Annual tests	22,500 locomotives	22,500 tests	15 minutes	5,625 hours	$253,125
232.3 -Applicability - Export, industrial, & other cars not owned by railroads-identification	545 railroads	8 cards	10 minutes	1 hour	$43
232.7 - Waivers	545 railroads	20 petitions	40 hours	800 hours	$34,400
232.11 - Penalties - Knowingly falsifying a record/report	545 railroads	1falsified recd/rpt	10 minutes	.17 hour	$8
232.15 - Movement of Defective Equipment -Tags - Written Notification	 1,620,000 cars 1,620,000 cars	 128,400 tags/rcds 25,000 notices	 2.5 minutes 3 minutes	 5,350 hours 1,250 hours	 $240,750 $56,250
232.17 - Special Approval Procedure - Petitions for special approval of safety-critical revision - Petitions for special approval of pre-revenue service acceptance plan - Service of petitions - Statement of interest - Comment	 545 railroads 545 railroads 545 railroads Public/railroads Public/railroads	 4 petitions 2 petitions 4 petitions 14 statements 13 comments	 100 hours 100 hours 40 hours 8 hours 4 hours	 400 hours 200 hours 160 hours 112 hours 52 hours	 $29,200 $14,600 $6,880 $4,816 $2,236
232.103-Gen'l requirements - all train brake systems	114,000 cars	70,000 stickers	10 minutes	11,667 hours	$242,200
232.105 - Gen'l requirements for locomotives-Inspection	22,500 Locomotives	22,500.forms	5 minutes	1,875 hours	$84,375
232.107 - Air source requirements and cold weather operations – Monitoring Plan (Subsequent Years) - Amendments to Plan -Recordkeeping	10 new railroads 50 railroads/plans 50 railroads/plans	1 plan 10 amendments 1,150 records	40 hours 20 hours 20 hours	40 hours 200 hours 23,000 hours	$2,920 $14,600 $989,000
232.109 - Dynamic brake requirements - status - Inoperative dynamic brakes - Tag bearing words "inoperative dynamic brakes" - Deactivated dynamic brakes (Sub. Yrs.) - Operating rules (Subsequent Years) - Amendments - Requests to increase 5 mph overspeed restriction - Knowledge criteria - locomotive engineers -Sub Yrs	545 railroads 20,000 locomotives 20,000 locomotives 8,000 locomotives 5 new railroads 545 railroads 545 railroads 5 new railroads	1,656,000 records 6,358 repair recds 6,358 tags 10 stencilings 5 operating rules 15 amendments 5 requests/lttrs. 5 amendments	4 minutes 4 minutes 30 seconds 5 minutes 4 hours 1 hour 30 min. + 20 hrs. 16 hours	110,400 hours 424 hours 53 hours 1 hour 20 hours 15 hours 103 hours 80 hours	4,747,200 $18,232 $2,385 $45 $1,460 $645 $4,429 $5,840
232.111 - Train information handling - Sub. Yrs.-Amendments - Report requirements to train crew	5 new railroads 100 railroads 545 railroads	5 procedures 100 amendments 2,112,000 reports	40 hours 20 hours 10 minutes	200 hours 2,000 hours 352,000 hours	$14,600 $86,000 $15,840,000

232.203 - Training requirements - Tr. Prog. - Sub Yr.	15 railroads	5 programs	100 hours	500 hours	$36,500
- Amendments to written program	545 railroads	545 amendments	8 hours	4,360 hours	$187,480
-Training records	545 railroads	67,000 records	8 minutes	8,933 hours	$384,119
- Training notifications	545 railroads	67,000 notific.	3 minutes	3,350 hours	$144,050
- Audit program	545 railroads	1 plan/545copies	40 hours/1 min.	49 hours	$3,091
- Amendments to validation/assessment program	545 railroads	50 amendments	20 hours	1,000 hours	$43,000
232.205 - Class 1 brake test - Notifications/Records	545 railroads	1,656,000 notific./records	45 seconds	20,700 hours	$1,035,000
232.207 - Class 1A brake tests - Subsequent Years	545 railroads	5 des. lists	1 hour	5 hours	$215
- Notification	545 railroads	5 amendments	1 hour	5 hours	$215
232.209 - Class II brake tests-intermediate inspection	545 railroads	1,600,000 comm	3-seconds	1,333 hours	$66,650
232.213 - Extended haul trains	84,000 long dist. mvmts.	100 letters	15 minutes	25 hours	$1,075
- Record of all defective/inoperative brakes	84,000 long dist. mvmts.	40,000 records	20 minutes	13,333 hours	$361,200
232.303 - Gen'l requirements - single car test	1,600,000 frgt. cars	5,600 tags	5 minutes	467 hours	$21,015
- Last repair track brake test/single car test	1,600,000 frgt. cars	320,000 stncl.	5 minutes	26,667 hours	$1,200,015
232.305 - Single Car tests	1,600,000 frgt. cars	320,000 tests/rcds	45 minutes	240,000 hours	$10,800,000
232.309 - Repair track brake test	640 shops	5,000 tests	30 minutes	2,500 hours	$112,500
232.403 - Unique Code	55 railroads	12 requests	5 minutes	1 hour	$43
232.407 - Operations requiring 2-way EOTs	245 railroads	50,000 comm.	30 seconds	417 hours	$20,850
232.409 - Insp. and Testing of EOTs	245 railroads	450,000 comm.	30 seconds	3,750 hours	$168,750
- Telemetry Equipment - Testing and Calibration	245 railroads	32,708 mar. units	1 minute	545 hours	$24,525
232.503- Process to introduce new brake technology	545 railroads	1 letter	1 hour	1 hour	$73
- Special approval	545 railroads	1 request	3 hours	3 hours	$219
232.505 - Pre-revenue svc accept. test plan - Sub Yr.	545 railroads	1 main. procedure	160 hours	160 hours	$11,680
- Amendments	545 railroads	1 main. procedure	40 hours	40 hours	$1,720
- Design description	545 railroads	1 petition	67 hours	67 hours	$4,891
- Report to FRA Assoc. Admin.. for Safety	545 railroads	1 report	13 hours	13 hours	$559
- Brake system technology testing	545 railroads	5 descriptions	40 hours	200 hours	$8,600
232.603 - Configuration Management - **New Rqmnts.**					
- Configuration Management Plan Submitted to FRA with Petition	4 railroads	1 petition + 1 plan	160 hours + 1 hour	161 hours	$11,753
- Subsequent Years	4 railroads	2 plans	60 hours	120 hours	$5,160
- Affirmative statement re: petition copy to RR employees representative	4 railroads	4 statements + 24 petition copies	1 hour + 5 min	6 hours	$258
- Comments on petition; copies of comment to FRA	Public/Int. Parties	3 petitions + 3 comment copies	4 hours + 5 min.	12 hours	$516
- New ECP Brake Technology: Exception to Testing	4 railroads	1 request	8 hours	8 hours	$344
- Modification of Standards - Request + Copies	4 railroads	1 request + 2 copies	8 hours + 5 min.	8 hours	$344
- Affirmative statement + statement copies re: modification request	4 railroads	4 statements + 24 copies	1 hour + 5 min.	6 hours	$258
- Comments on requested modification	Public/Int. Parties	4 comments	2 hours	8 hours	$344
232.605 - ECP Brakes:Training - **New Requirements**					
- Adopt/Developing an ECP Training Prog.- Yr. One	4 railroads	4 programs	100 hours	400 hours	$29,200
- Subsequent Years	6 railroads	2 programs	100 hour	200 hours	$14,600
- ECP Brakes Training of Employees - Yr. One	4 railroads	6,409 tr. Empl.	8 hrs/32 hrs.	105,512 hours	$0 (covered in RIA)
- ECP Brakes Training of Employees - Sub. Yrs.	4 railroads	6,409 tr. Empl	1 hour/8 hours	30,264 hours	$0 (covered in RIA)
- ECP Training Records -Yr. One	4 railroads	6,409 records	8 minutes	855 hours	$36,765
- ECP Training Records - Subsequent Years	4 railroads	6,409 records	4 minutes	428 hours	$18,404
- Assessment of ECP Training Plan	4 railroads	4 plans	40 hours	160 hours	$6,880
- Adopt Operating Rules for ECP Brakes	4 railroads	4 Oper. Rules	24 hours	96 hours	$7,008
- Loco. Engineers - ECP: Criteria For	4 railroads	4 amend. Progs.	40 hours	160 hours	$11,680
232.607 - ECP Inspection and Testing - **New Reqmnt**					
- Initial Terminal - Inspections and Notification of Class I Brake Tests	4 railroads	28,000 insp. + 28,000 notific.	90 min + 45 sec.	42,350 hours	$15,750
- Cars added or removed en route - Class I Br. Test	4 railroads	7,000 insp. + 3,500 notific.	60 min. + 45 sec.	7,044 hours	$1,980

232.609 - Handling of Defective Equipment with ECP Brake Systems - **New Requirements**					
– Freight Car w /defective conventional brakes moved in train operating in ECP brake mode	25 Cars	50 tags/records	2.5 minutes	2 hours	$90
- Inspections/Tagging for ECP Train moving w/less than 85 percent operative/effective brakes	20 Cars	20 Insp. + 40 tags/records	5 min. + 2.5 min.	3 hours	$135
- Cars tagged in accordance with Sec. 232.15--C- - CCCcCC					
232.609 - Freight Car with ECP brake system found with defective non-brake safety appliance – Tagging	75 Cars	150 tags/records	2.5 minutes	6 hours	$270
- Conventional Train with stand-alone ECP brake equipped cars – Tagging	15,000 Cars	30,000 tags/rcds.	2.5 minutes	1,250 hours	$56,250
- Procedures for handling ECP brake system repairs and designation of repair locations	4 railroads	4 procedures	24 hours	96 hours	$7,008
- List of repair locations	4 railroads	4 lists	16 hours	64 hours	$2,880
- Notification to FRA Safety Administrator regarding change to repair location list	4 railroads	1 notification	1 hour	1 hour	$45
232.611 - Periodic Maintenance - **New Requirement**					
- Inspections before being released from repair Shop	50,000 fr. Cars	50,000 insp./rcds	11 minutes	9,167 hours	$412,515
- Procedures for ECP Single Car Tests	1 Railroad Rep.	1 proc./petition + 2 copies	100 hours + 5 min.	100 hours	$7,300
- Single Car Air Brake Tests – Records	70,000 fr. Cars	70,000 test/rcds.	45 minutes	52,500 hours	$2,362,500
- Modification of Single Car Test Standards	1 Railroad Rep.	1 mod. Proc.	40 hours	40 hours	$2,920
232.613 - End-of-Train Devices **-New Requirement**					
- Submission of Design, Testing, and Calibration Standards related to ECP-EOT devices used on freight trains operating in ECP mode	4 railroads	1 standard	16 hours	16 hours	$1,168

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All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292 or Ms. Gina Christodoulou at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Christodoulou at *gina.christodoulou@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this NPRM between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA 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.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has Federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This proposed rule has preemptive effect. Subject to a limited exception for essentially local safety or security hazards, its requirements will establish a uniform Federal safety standard that must be met, and state requirements covering the same subject are displaced, whether those standards are in the form of state statutes, regulations, local ordinances, or other forms of state law, including state common law. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an

essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. FRA concludes that this proposed rule will not impose any direct compliance costs on State and local governments and has no federalism implications, other than the preemption of state laws covering the subject matter of this final rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order. Elements of the final rule dealing with safety appliances affect an area of safety that has been pervasively regulated at the Federal level for over a century. Accordingly, the final rule amendments in that area will involve no impacts on Federal relationships.

E. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. See 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows: (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * * (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,700,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule, if enacted, may result in the expenditure, in the aggregate, of $120,700,000 or more in any one year. However, those expenses are not mandated and would only be incurred by the private sector if it wishes to take advantage of the regulatory relief provided by the proposed rule. Although the preparation of such a statement is not required, the analytical requirements under Executive Order 12866 are similar to the analytical requirements under the Unfunded Mandates Reform Act of 1995 and, thus, the same analysis complies with both analytical requirements.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 232

Electronically controlled pneumatic brakes, Incorporation by reference, Penalties, Railroad power brakes, Railroad safety, Two-way end-of-train devices.

The Proposal

In consideration of the foregoing, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

1. The authority citation for Part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 232.5 is amended by adding definitions for ''car control device (CCD)'', ''dual mode ECP brake system'', ''ECP'', '' ECP brake mode'', ''ECP brake system'', ''ECP–EOT device'', ''emulator CCD'', ''overlay ECP brake system'', ''stand-alone CCD'', ''stand-alone ECP brake system'', ''switch mode'', and ''train line cable''; and by revising the definitions for ''train, unit or train, cycle'' and ''yard limits'' as follows in alphabetical order:

§ 232.5 Definitions.

* * * * *

Car control device (CCD) means an electronic control device that replaces the function of the conventional pneumatic service and emergency portions of a car's air brake control valve during electronic braking and provides for electronically controlled service and emergency brake applications.

Dual mode ECP brake system means an ECP brake system that is equipped with either an emulator CCD or an overlay ECP brake system on each car which can be operated in either ECP brake mode or conventional pneumatic brake mode.

ECP means ''electronically controlled pneumatic'' when applied to a brake or brakes.

ECP brake mode means the power braking system on a car or an entire train that is actuated by compressed air, controlled by electronic signals originating at the locomotive or an ECP–EOT for service and emergency applications, and whose brake pipe is used to provide a constant supply of compressed air to the reservoirs on each car but does not convey service braking signals to the car.

ECP brake system means a train power braking system actuated by compressed air and controlled by electronic signals from the locomotive or an ECP–EOT to the cars in the consist for service and emergency applications in which the brake pipe is used to provide a constant supply of air to the reservoirs on each car but does not convey braking signals to the car. ECP brake systems include dual mode and stand-alone ECP brake systems.

ECP–EOT device means the end-of-train device for ECP brake systems that is physically the last network node in the train, pneumatically and electrically connected at the end of the train to the train line cable operating with an ECP brake system. It shall transmit a status message (EOT Beacon) at least once per second and contain a means of communicating with the HEU, a brake pipe pressure transducer, and a battery that charges off the train line cable.

* * * * *

Emulator CCD means a CCD that is capable of optionally emulating the function of the pneumatic control valve while in a conventionally braked train.

* * * * *

Overlay ECP brake system means a brake system that has both conventional pneumatic brake valves and ECP brake components, making it capable of operating as either a conventional pneumatic brake system or an ECP brake system, which can continue to operate as a conventional pneumatic brake system using conventional control valves when its ECP brake functions fail or are placed in cutout mode.

* * * * *

Stand-alone CCD means a CCD that can operate properly only in a train operating in ECP brake mode and cannot operate in a conventional pneumatically braked train.

Stand-alone ECP brake system means a brake system equipped with a CCD that can only operate the brakes on the car properly in ECP brake mode.

* * * * *

Switch Mode means a mode of a train equipped with an ECP brake system that provides a means to allow operation of that train when the train's ECP—EOT device is not communicating with the lead locomotive's HEU or when the train is separated during road switching operations. Many of the ECP brake system's fault detection/response procedures are suspended during Switch Mode. A train operating in Switch Mode shall not exceed 20 miles per hour.

* * * * *

Train line cable is a two-conductor electric wire spanning the train and carrying both electrical power to operate all CCDs and ECP—EOT devices and communications network signals.

Train, unit or train, cycle means a train that, except for the changing of locomotive power ore for the removal or replacement of defective equipment, remains coupled as a consist and operates in a continuous loop or continuous loops without a destination.

* * * * *

Yard limits means a system of tracks, not including main tracks and sidings, used for classifying cars, making-up and inspecting trains, or storing cars and equipment.

* * * * *

3. Part 232 is amended by adding a new subpart G to read as follows:

Subpart G—Electronically Controlled Pneumatic (ECP) Braking Systems

Sec.

232.601 Scope.
232.602 Applicability.
232.603 Design, interoperability, and configuration management requirements.
232.605 Training requirements.
232.607 Inspection and testing requirements.
232.609 Handling of defective equipment with ECP brake systems.
232.611 Periodic maintenance.
232.613 End-of-train devices.

Subpart G—Electronically Controlled Pneumatic (ECP) Braking Systems

§ 232.601 Scope.

This subpart contains specific requirements applicable to freight trains and freight cars equipped with ECP brake systems. This subpart also contains specific exceptions from various requirements contained in this part for freight trains and freight cars equipped with ECP brake systems.

§ 232.602 Applicability.

This subpart applies to all railroads that operate a freight car or freight train governed by this part and equipped with an ECP brake system. Unless specifically excepted or modified in this section, all of the other requirements contained in this part are applicable to a freight car or freight train equipped with an ECP brake system.

§ 232.603 Design, interoperability, and configuration management requirements.

(a) *General.* A freight car or freight train equipped with an ECP brake system shall, at a minimum, meet the Association of American Railroads (AAR) standards contained in the AAR Manual of Standards and Recommended Practices related to ECP brake systems listed below; an alternate standard approved by FRA pursuant to § 232.17; or a modified standard approved in accordance with the provisions contained in paragraph (f) of this section. Copies of the standards identified in this section may be obtained from the Association of American Railroads, 50 F Street, NW., Washington, DC 20001. The applicable standards, which are incorporated into this regulation by reference, include the following:

(1) AAR S–4200, ''ECP Cable-Based Brake Systems—Performance Requirements'' (2004);

(2) AAR S–4210, ''ECP Cable-Based Brake System Cable, Connectors, and Junction Boxes—Performance Specifications'' (2002);

(3) AAR S–4220, ''ECP Cable-Based Brake DC Power Supply—Performance Specification'' (2002);

(4) AAR S–4230, ''Intratrain Communication (ITC) Specification for Cable-Based Freight Train Control System'' (2004);

(5) AAR S–4250, ''Performance Requirements for ITC Controlled Cable-Based Distributed Power Systems'' (2004); and

(6) AAR S–4260, ''ECP Brake and Wire Distributed Power Interoperability Test Procedures'' (2007);

(b) *Approval.* A freight train or freight car equipped with an ECP brake system

and equipment covered by the AAR standards incorporated by reference in this section shall not be used without conditional or final approval by AAR in accordance with AAR Standard S–4240, ''ECP Brake Equipment—Approval Procedures'' (2007).

(c) *Configuration management.*

(1) ECP brake systems shall meet the configuration management plan requirements contained in:

(i) An industry recognized standard approved by FRA, or

(ii) A configuration management plan submitted to and approved by FRA.

(2) To receive approval in accordance with paragraph (c)(1)(ii) of this section, a configuration management plan must:

(i) Be submitted in accordance with * 232.17;

(ii) Be structured in accordance with accepted configuration management standards; and

(iii) Define all of the purposes, procedures, organizational responsibilities, and tools to be used for ECP brake system hardware and software configuration management including: The purpose and scope of the application; control activities to be performed; responsibilities and authorities for accomplishing the activities; implementation schedules; tools and resources for executing the plan; and periodic updating of the plan to maintain currency.

(3) A railroad operating a freight train or freight car equipped with ECP brake systems shall adopt and comply with the configuration management plan required under paragraphs (c)(1) and (c)(2) of this section.

(d) *Exceptions.* (1) A freight car or freight train equipped with a stand-alone ECP brake system shall be excepted from the requirement in § 232.103(l) referencing AAR Standard S–469–47, ''Performance Specification for Freight Brakes.''

(2) The provisions addressing the introduction of new brake system technology contained in subpart F of this part are not applicable to a freight car or freight train equipped with an ECP brake system approved by AAR in accordance with paragraph (b) of this section, conditionally or otherwise, as of the effective date of this rule.

(e) *New technology.* Upon written request supported by suitable justification, the Associate Administrator may except from the requirements of subpart F of this part the testing of new ECP brake technology, demonstration of new ECP brake technology, or both, where testing or demonstration, or both, will be conducted pursuant to an FRA-recognized industry standard and FRA is invited to monitor the testing or demonstration, or both. FRA's Associate Administrator may revoke any such exception in writing after providing an opportunity for response by the affected parties.

(f) *Modification of standards.* The AAR or other authorized representative of the railroad industry may seek modification of the industry standards identified in paragraphs (a) and (b) of this section. The request for modification will be handled and shall be submitted in accordance with the modification procedures contained in § 232.307.

§ 232.605 Training requirements.

(a) *Inspection, testing and maintenance.* A railroad that operates a freight car or freight train equipped with an ECP brake system and each contractor that performs inspection, testing, or maintenance on a freight car or freight train equipped with an ECP brake system shall adopt and comply with a training, qualification, and designation program for its employees that perform inspection, testing or maintenance of ECP brake systems. The training program required by this section shall meet the requirements in *§ 232.203(a), (b), (e), and (f).

(b) *Operating rules.* A railroad operating a freight train or freight car equipped with an ECP brake system shall amend its operating rules to govern safe train handling procedures related to ECP brake systems and equipment under all operating conditions, which shall be tailored to the specific equipment and territory of the railroad.

(c) *Locomotive engineers.* A railroad operating a freight car or freight train equipped with an ECP brake system shall adopt and comply with specific knowledge, skill, and ability criteria to ensure that its locomotive engineers are fully trained with the operating rules governing safe train handling procedures related to ECP brake systems and equipment under all operating conditions, which shall be tailored to the specific equipment and territory of the railroad. The railroad shall incorporate the specific knowledge, skill, and ability criteria into its locomotive engineer certification program pursuant to part 240 of this chapter.

§ 232.607 Inspection and testing requirements.

(a) *Initial terminal.* A freight train operating in ECP brake mode shall receive a Class I brake test as described in § 232.205(c) by a qualified mechanical inspector (QMI) and shall receive a pre-departure freight inspection pursuant to part 215 of this chapter by an inspector designated under § 215.11 of this chapter at its point of origin (initial terminal).

(b) *Distance.* (1) Except for a unit or cycle train, a train operating in ECP brake mode shall not operate a distance that exceeds its destination or 3,500 miles, whichever is less, unless another inspection meeting the requirements of paragraph (a) of this section is performed on the train.

(2) A unit or cycle train operating in ECP brake mode shall receive the inspections required in paragraph (a) of this section at least every 3,500 miles.

(3) The distance that any car in a train has traveled since receiving a Class I brake test by a qualified mechanical inspector will determine the distance that the train has traveled.

(c) *Trains off air.* A freight train operating in ECP brake mode shall receive a Class I brake test as described in § 232.205(c) by a qualified person at a location where the train is off air for a period of more than 24 hours.

(d) *Cars added en route.* (1) Each car equipped with an ECP brake system that is added to a train operating in ECP brake mode shall receive a Class I brake test as described in § 232.205(c) by a qualified person, unless all of the following are met:

(i) The car has received a Class I brake test by a qualified mechanical inspector within the last 3,500 miles;

(ii) Information identified in § 232.205(e) relating to the performance of the previously received Class I brake test is provided to the train crew;

(iii) The car has not been off air for more than 24 hours; and

(iv) A visual inspection of the car's brake systems is conducted to ensure that the brake equipment is intact and properly secured. This may be accomplished as part of the inspection required under § 215.13 of this chapter and may be conducted while the car is off air.

(2) Each car and each solid block of cars not equipped with an ECP brake system that is added to a train operating in ECP brake mode shall receive a visual inspection to ensure it is properly placed in the train and safe to operate and shall be moved and tagged in accordance with the provisions contained in § 232.15.

(e) *Class III brake tests.* A freight train operating in ECP brake mode shall receive a Class III brake test as described in § 232.211(b), (c), and (d) at the location where the configuration of the train is changed, including:

(1) Where a locomotive or caboose is changed;

(2) Where a car or solid block of cars is added to the train;

(3) Where a car or solid block of cars is removed from the train; and

(4) Whenever the continuity of the brake pipe or electrical connections is broken or interrupted with the train consist otherwise remaining unchanged.

(f) *Modification to existing brake tests.* (1) In lieu of the specific brake pipe service reductions and increases required in subpart C of this part, an electronic signal that provides an equivalent application and release of the brakes shall be utilized when conducting any required inspection or test on a freight car or freight train equipped with an ECP brake system and operating in ECP brake mode.

(2) In lieu of the specific minimum piston travel ranges contained in § 232.205(c)(5), the piston travel on freight cars equipped with ECP brake systems shall be within the piston travel limits stenciled or marked on the car or badge plate consistent with the manufacturers recommended limits, if so stenciled or marked.

(g) *Exceptions.* A freight car or a freight train shall be exempt from the requirements contained in §§ 232.205(a) and (b), 232.207, 232.209, and 232.211(a) when it is equipped with an ECP brake system and operating in ECP brake mode.

§ 232.609 Handling of defective equipment with ECP brake systems.

(a) Ninety-five percent of the cars in a train operating in ECP brake mode shall have effective and operative brakes prior to use or departure from the train's initial terminal or any location where a Class I brake test is required to be performed on the entire train by a qualified mechanical inspector pursuant to § 232.607.

(b) A freight car equipped with an ECP brake system that is known to have arrived with ineffective or inoperative brakes at the location of a train's initial terminal or at a location where a Class I brake test is required under § 232.607(b) shall not depart that location with ineffective or inoperative brakes in a train operating in ECP brake mode unless:

(i) The location does not have the ability to conduct the necessary repairs;

(ii) The car is hauled only for the purpose of repair to the nearest forward location where the necessary repairs can be performed consistent with the guidance contained in § 232.15(f);

(iii) The car is not being placed for loading or unloading while being moved for repair unless unloading is necessary for the safe repair of the car; and

(iv) The car is properly tagged in accordance with § 232.15(b).

(c) A freight car equipped with only conventional pneumatic brakes shall not move in a freight train operating in ECP brake mode unless it would otherwise have effective and operative brakes if it were part of a conventional pneumatic brake equipped train or could be moved from the location in defective condition under the provisions contained in § 232.15 and is tagged in accordance with § 232.15(b).

(d) A freight train operating in ECP brake mode shall not move if less than 85 percent of the cars in the train have operative and effective brakes. However, after experiencing a penalty stop for having less than 85 percent operative and effective brakes, a freight train operating in ECP brake mode may be moved if all of the following are met:

(1) The train is visually inspected;

(2) Appropriate measures are taken to ensure that the train is safely operated to the location where necessary repairs or changes to the consist can be made;

(3) A qualified person determines that it is safe to move the train; and

(4) The train is moved in ECP brake Switch Mode to the nearest forward location where necessary repairs or changes to the consist can be made.

(e) A freight car or locomotive equipped with an ECP brake system that is found with inoperative or ineffective brakes for the first time during the performance of a Class I brake test or while en route may be used or hauled without civil penalty liability under this part to its destination, not to exceed 3,500 miles; provided, all applicable provisions of this section are met and the defective car or locomotive is hauled in a train operating in ECP brake mode.

(f) A freight car equipped with an ECP brake system that is part of a train operating in ECP brake mode that is found with a defective non-brake safety appliance may be used or hauled without civil penalty under this part to the nearest forward location where the necessary repairs can be performed consistent with the guidance contained in § 232.15(f).

(g) A train operating with conventional pneumatic brakes shall not operate with freight cars equipped with stand-alone ECP brake systems unless:

(1) The train has at least the minimum percentage of operative brakes required by paragraph (h) of this section when at an initial terminal or paragraph (d) of this section when en route; and

(2) The stand-alone ECP brake equipped cars are:

(i) Moved for the purpose of delivery to a railroad receiving the equipment or to a location for placement in a train operating in ECP brake mode or being moved for repair to the nearest available location where the necessary repairs can be made in accordance with §§ 232.15(a)(7) and (f);

(ii) Tagged in accordance with § 232.15(b); and

(iii) Placed in the train in accordance with § 232.15(e).

(h) A train equipped and operated with conventional pneumatic brakes may depart an initial terminal with freight cars that are equipped with stand-alone ECP brake systems provided all of the following are met:

(1) The train has 100 percent effective and operative brakes on all cars equipped with conventional pneumatic brake systems;

(2) The train has at least 95 percent effective and operative brakes when including the freight cars equipped with stand-alone ECP brake systems; and

(3) The requirements contained in paragraph (g) of this section are met.

(i) *Tagging of defective equipment.* A freight car equipped with an ECP brake system that is found with ineffective or inoperative brakes will be considered electronically tagged under § 232.15(b)(1) and (b)(5) if the car is used or hauled in a train operating in ECP brake mode and the ECP brake system meets the following:

(1) The ECP brake system is able to display information in the cab of the lead locomotive regarding the location and identification of the car with defective brakes;

(2) The information is stored or downloaded, is secure, and is accessible to FRA and appropriate operating and inspection personnel; and

(3) An electronic or written record of the stored or downloaded information is retained and maintained in accordance with § 232.15(b)(3).

(j) *Procedures for handling ECP brake system repairs and designation of repair locations.* (1) Each railroad operating freight cars equipped with ECP brake systems shall adopt and comply with specific procedures developed in accordance with the requirements related to the movement of defective equipment contained in this subpart. These procedures shall be made available to FRA upon request.

(2) Each railroad operating freight trains in ECP brake mode shall submit to FRA's Associate Administrator for Safety a list of locations on its system where ECP brake system repairs will be performed. A railroad shall notify FRA's Associate Administrator for Safety in writing 30 days prior to any change in the locations designated for such repairs. A sufficient number of locations shall be identified to ensure compliance

with the requirements related to the handling of defective equipment contained in this part.

(k) *Exceptions:* All freight cars and trains that are specifically identified, operated, and handled in accordance with this section are excepted from the movement of defective equipment requirements contained in § 232.15(a)(2), (a)(5) through (a)(8), and 232.103(d) and (e).

§ 232.611 Periodic maintenance.

(a) In addition to the maintenance requirements contained in § 232.303(b) through (d), a freight car equipped with an ECP brake system shall be inspected before being released from a shop or repair track to ensure the proper and safe condition of the following:

(1) ECP brake system wiring and brackets;

(2) ECP brake system electrical connections;

(3) Electrical grounds and impedance; and

(4) Car mounted ECP brake system components.

(b) Prior to placing a freight car equipped with an ECP brake system in revenue service, a railroad or a duly authorized representative of the railroad industry shall submit a procedure for conducting periodic single car tests to FRA for its approval pursuant to the special approval procedures contained in § 232.17.

(c) Except as provided in § 232.303(e), a single car air brake test conducted in accordance with the procedure submitted and approved in accordance with paragraph (b) of this section shall be performed on a freight car equipped with an ECP brake system whenever any of the events identified in § 232.305(e) occur, except for those paragraphs identified in paragraph (f) of this section.

(d) A single car air brake test conducted in accordance with the procedure submitted and approved in accordance with paragraph (b) of this section shall be performed on each freight car retrofitted with a newly installed ECP brake system prior to placing or using the car in revenue service.

(e) *Modification of single car test standard.* A railroad or a duly authorized representative of the railroad industry may seek modification of the single car test standard approved in accordance with paragraph (b) of this section. The request for modification will be handled and shall be submitted in accordance with the modification procedures contained in § 232.307.

(f) *Exception.* A freight car equipped with a stand-alone ECP brake system is excepted from the single car test requirements contained in § 232.305(b)(2) and (f).

§ 232.613 End-of-train devices.

(a) Prior to operating a freight train in ECP brake mode, a railroad, an ECP–EOT device manufacturer, or a duly authorized representative of the railroad industry may submit design, testing, and calibration standards related to ECP–EOT devices used on freight trains operating in ECP brake mode to FRA for its approval pursuant to the special approval procedures contained in § 232.17. An ECP–EOT shall, at a minimum, serve as the final node on the ECP brake circuit, provide a cable terminal circuit, and monitor, confirm, and report train, brake pipe, and train line cable continuity, cable voltage, brake pipe pressure, and the status of the ECP–EOT device battery charge.

(b) A railroad shall adopt and comply with the design, testing, and calibration standards approved pursuant to paragraph (a) of this section.

(c) A railroad shall not move or use a freight train equipped with an ECP brake system unless that train is equipped with a functioning ECP–EOT device approved pursuant to paragraph (a) of this section and the railroad complies with paragraph (b) of this section. The ECP–EOT device must be properly connected to the network and to the train line cable at the end of the train.

(d) *Exception.* A freight train operating in ECP brake mode is excepted from the end-of-train device requirements contained in subpart E of this part, provided that it is equipped with an ECP–EOT device complying with this section.

Issued in Washington, DC, on August 23, 2007.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 07–4297 Filed 8–30–07; 8:45 am]

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Federal Register

Tuesday,
September 4, 2007

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 33

Airworthiness Standards; Aircraft Engine Standards for Engine Life-Limited Parts; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No.: FAA–2006–23732; Amendment No. 33–22]

RIN 2120–AI72

Airworthiness Standards; Aircraft Engine Standards for Engine Life-Limited Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the certification standards for original and amended type certificates for aircraft engines by modifying the standards for engine life-limited parts. This final rule establishes new and uniform standards for the design and testing of life-limited parts for aircraft engines certificated by the FAA and the European Aviation Safety Agency (EASA). This rule retains the current lifing requirements, introduces damage tolerance requirements into the design process, and strengthens cooperation between engineering, manufacturing, and service elements of turbine engine manufacturers. These new requirements provide an added margin of safety and will reduce the number of life-limited parts failures due to material, manufacturing, and service induced anomalies. Additionally, this action adds new standards for the design of reciprocating engine turbocharger rotors.

DATES: This amendment becomes effective November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Directorate Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7114; fax (781) 238–7199, e-mail: *timoleon.mouzakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This regulation is within the scope of that authority because it updates the existing regulations for aircraft engine life-limited parts.

Background

Manufacturing-induced anomalies in engine disks have caused several fatal airplane accidents, notably in Sioux City, Iowa, in 1989, and in Pensacola, Florida, in 1996. The DC–10 crash in Sioux City was caused by a titanium material anomaly created during the material melting process. The MD–88 accident in Pensacola was attributed to a fatigue crack which initiated from an abnormal microstructure created during manufacturing. Most of the uncontained engine failures have been traced to material, manufacturing or operations/maintenance induced anomalies. Recent examples include:

- Failure of a CF6 engine high pressure stage 1 turbine disk on a Boeing 767 airplane during a ground test at Los Angeles International Airport in June 2006, that was attributed to a manufacturing-induced anomaly in a rim slot; and
- In-flight failure of a CF34 engine fan disk on a Bombardier CRJ–200 airplane departing Denver International Airport on January 25, 2007. The root cause of this failure is currently under investigation.

Industry data has shown that manufacturing-induced anomalies have caused about 40 percent of recent rotor cracking and failure events. Data for the period 1984 to 1989 indicates that uncontained engine failures due to material, manufacturing and maintenance induced anomalies occur at the rate of 1.2 per 10 million flights or approximately 3 events per year. Due to these accidents and the supporting data, the FAA determined the need to revise engine certification standards related to the design of engine parts whose failure would result in a hazardous engine condition.

In addition, a group representing the FAA, the engine industry, and European aviation authorities has worked since 1989 to revise and harmonize the U.S. and European engine certification requirements. This rule, which is based on this group's recommendations, creates common U.S. and European engine requirements for turbine engine life-limited parts (called ''critical parts'' in European regulations).

Definitions of Terms Used in the Rule

The following definitions are provided, but are not part of the rule itself:

- Primary failure: Failure of a part that is not the result of a prior failure of another part or system.
- Failure: Separation of a part into two or more pieces such that the part is no longer whole or complete.
- Likely to result: Possible outcomes on an engine or aircraft when a part fails, regardless of probability of occurrence.

Safety Recommendation

The following safety recommendation, issued by National Transportation Safety Board (NTSB), is addressed by this rule:

- NTSB Safety Recommendation A–90–90 was issued as a result of the United Airlines accident on July 19, 1989, in Sioux City, Iowa, where 111 people died and 172 were injured. The NTSB recommended that the FAA amend 14 CFR part 33 ''to require that turbine engines certificated under this rule are evaluated to identify those engine components that, if they should fracture and separate, could pose a significant threat to the structure or systems of an airplane; and require that a damage tolerance evaluation of these components be performed.''

Regulations Affecting Static Parts

The FAA has regulated static parts for more than a decade under § 33.19(a), which requires the engine be designed and constructed to minimize the development of an unsafe condition between overhaul periods. Experience with several types of static parts has shown that fatigue failures can result in hazardous engine effects. For example, high-pressure casing fatigue failures have led to high pressure vessel bursts and fire. Issue papers initiated by the FAA, based on § 33.19, have resulted in engine manufacturers classifying a limited number of static parts as ''life-limited.'' Life-limited parts are included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness.

The new § 33.70 affects only those static parts whose failure could result in a hazardous engine effect. Therefore, only a limited number of static parts will be classified as ''life-limited parts'' and affected by the new rule. Those static parts formerly regulated under § 33.19 are more properly located under § 33.70, which is based on whether the failure of a part could cause a hazardous

engine effect rather than whether a part rotates or is static.

Summary of Final Rule

New § 33.70 replaces § 33.14. Section 33.70 introduces the term ''engine life-limited parts'' to cover rotating structural parts, as well as major static structural parts, whose primary failure is likely to result in a hazardous engine effect, as listed in § 33.75, and whose failure mode is either cycle (fatigue) or time (creep) dependent. This rule addresses all parts, rotating or static, that meet the definition of an engine life-limited part. The rule requires FAA approval of the procedures used to establish life limits and address anomalies.

This rule retains the current life methodology which limits the useful rotor life to the minimum number of flight cycles required to initiate a crack approximately 0.030 inches in length by 0.015 inches in depth. The rule requires sufficient analysis and testing to evaluate the effects of elevated temperatures and hold times as well as the interaction with other failure mechanisms (for example, high cycle fatigue, creep, and cold-dwell). The methodology used to establish life limits for static parts is similar to those used for rotating parts. For static parts, the life limit may be based on the crack initiation life plus a portion of the residual crack growth life, providing a safe margin is maintained between part retirement life and failure.

The rule also requires applicants to develop coordinated engineering, manufacturing, and service management plans for each life-limited part. This will ensure the attributes of a part that determine its life are identified and controlled so that the part will be consistently manufactured and properly maintained during service operation.

The rule introduces new requirements for applicants to conduct damage tolerance assessments to limit the potential for failure from material, manufacturing, and service induced anomalies. Applicants can use a variety of methods to conduct damage tolerance assessments. For example, applicants can use probabilistic risk assessments or design a part to have a specified crack growth life. The introduction of damage tolerance does not allow rotor components to remain in service with cracks. Rotor parts must be removed from service when the parts reach the end of their useful life as defined by the minimum number of flight cycles required to initiate a crack.

This rule removes turbocharger rotor life requirements from § 33.14 and places them in a new § 33.34.

Summary of Comments

The FAA published a Notice of Proposed Rulemaking (NPRM) entitled Airworthiness Standards: Aircraft Engine Standards for Engine Life-Limited Parts on February 2, 2006 (71 FR 5770). Nine commenters responded to the NPRM request for comments. The commenters included three turbine engine manufacturers; two domestic airplane operators, who submitted through their representative association; two foreign regulatory authorities; a domestic parts manufacturer; and an individual. The turbine engine manufacturers fully support the rule while proposing minor changes. Other commenters, including two airline operators and a parts manufacturer, believe that inclusion of structural static parts as life-limited parts in the rule would substantially increase their costs and affect the potential of small businesses to repair life-limited parts.

Static Parts

Those static parts that meet the definition of ''life-limited,'' as established by § 33.70, require FAA approval of the procedures used to establish life limits and address anomalies related to those parts.

Two airline operators and a parts manufacturer stated that the rule should not impose life limits on static parts. American Airlines stated that the FAA is introducing a new requirement that ''all structural parts, both rotating and static are to be addressed as Engine Life-Limited Parts.'' American noted that based on Continued Airworthiness Assessment Methodologies (CAAM) data from 1992 to 2000 ''the probability of occurrence of case ruptures is very small'' and ''there does not seem to be a good reason to consider static cases or other static parts as life-limited, and they should not be.'' Similarly, United Airlines ''does not see imposing life limits on this static hardware as enhancing safety.'' Chromalloy Gas Turbine Corporation found ''that the FAA has not identified sufficient, nor appropriate substantiating cause to make such a bold change as to include static structures (high pressure turbine casings) under the term life-limited parts.''

The FAA believes it is essential to include a limited number of structural static parts in the rules as service experience has demonstrated that failure of these parts may result in hazardous consequences to an aircraft. We also find that inclusion of certain static parts under § 33.70 does not impose a new requirement for turbine engine manufacturers who currently meet the requirements of § 33.19, Durability, and EASA certification requirements. We find that turbine engine manufacturers, based on § 33.19 and issue papers, have classified a limited number of static parts as ''life-limited'' for at least the last decade. Examples of engines with static parts classified as ''life-limited'' include: The CF34 (GE) family of engines, installed on Bombardier and Embraer regional jets; GE90 Growth family of engines, installed on the Boeing 777; Engine Alliance's (General Electric and Pratt & Whitney) GP7200 engine, installed on the Airbus A–380; and GEnx engine, to be installed on the Boeing 787.

All engine manufacturers who desire certification in Europe must also meet EASA engine certification requirements. Under EASA requirements, CS–E 515, Engine Critical Parts, turbine engine manufacturers already classify a limited number of static parts as ''life-limited'' and include these parts in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness. Imposing two different standards for engine certification on U.S. engine manufacturers increases the costs of developing and certifying aircraft turbine engines with no associated safety benefits.

We note that CAAM data covers the period from 1982 to 1996. Based on this data, rupture of engine cases was the 10th leading cause of level 3 or 4 events (significant damage or total loss to aircraft, or minor injuries or loss of life).

Definition of ''Likely to Result''

Section 33.70 establishes that ''Engine life-limited parts are rotor and major static structural parts whose primary failure is likely to result in a hazardous engine effect.'' The term ''likely to result'' in this rule refers to possible consequences that may occur from an engine part failure.

American Airlines took issue with the definition and use of the term ''likely to result.'' American commented that ''likely to result'' is ''not clearly defined'' and ''does not agree with the SAE (Society of Automotive Engineers) interpretation for CAAM analysis.'' American also believes that the definition goes beyond the current § 33.14 and forces consideration of all failures no matter how remote the possibility of occurrence.

We have clarified that ''likely to result'' refers to possible consequences to an engine or aircraft that may occur from an engine part failure. The consequence of failure determines if a part is considered a life-limited part.

The commenter's reference to an SAE interpretation of ''likely to result,'' used

during CAAM analysis, deals with failures that have already occurred in service. The SAE interpretation is appropriate for analysis of failures that already occurred, but is not appropriate for a certification rule that applies to an engine manufacturer during the design and certification process. The definition of ''likely to result'' does not apply or alter the corresponding definition used by CAAM techniques.

The definition is consistent with current § 33.14 that states a life limit must be established for each rotor part, ''the failure of which could produce a hazard to the aircraft.'' It is absolutely essential to safety that the consequences of failure are anticipated to ensure appropriate engine parts are designated as life-limited parts. Once a part is designated as life-limited, a vast array of quality standards is applied to the part to prevent the unsafe consequences.

Costs of Rule

American Airlines expressed concern that the rule would result in ''unjustifiable additional costs.'' United Airlines stated that the rule will ''significantly drive up operator's costs.'' United claimed that ''the slightest defect, insignificant or otherwise, will result in a part being held-up in its repair cycle, while FAA Approved Data is sought. * * * To compensate, operators will be forced to increase inventory levels of this expensive hardware.''

The rule may result in a small increase in the number of static parts classified as ''life-limited'' beyond those few major structural static parts currently classified as life-limited under existing regulations. In addition, static parts are usually designed to have a life consistent with the life of the engine. Unlike rotor parts, static parts are repaired and their life is extended, provided their life limits are re-established using approved methods. The classification of static parts as life-limited requires engine manufacturers to design these parts to a higher standard including validation of life. The design of these parts to a higher standard, as well as the need to meet higher quality control manufacturing standards, has the potential to reduce the number of required repairs.

Effects on Small Businesses

Chromalloy Gas Turbine Corporation commented that ''With regard to static structural parts, there are many small entities that perform the maintenance tasks on these parts in direct competition with Original Engine Manufacturers.'' Chromalloy further claimed that ''The proposed rule change will severely affect the ability of these many entities to develop and perform repairs for the static structural parts independent of the Original Engine Manufacturers.''

We do not agree that the rule prevents any entities from performing maintenance on life-limited parts (''static'' or ''rotating''). Any entity, however, that repairs critical aircraft engine parts must possess the necessary inspection, design, analysis, and engineering skills to evaluate whether a repair is done properly. The safety of the part depends on the applicant possessing these skills.

Service Management Plan

Rolls-Royce Corporation noted that the rule requires a Service Management Plan that defines in-service processes for maintenance and repair, and that these processes become part of the Instructions for Continued Airworthiness (ICA). Rolls-Royce commented that the ''rule could be interpreted to require that all engine life-limited repair processes be defined by the Design Approval Holder (DAH) and subsequently 'made available' under the normal ICA requirements. * * *''

We revised the rule to require an applicant to specify the ''limitations'' associated with a part's repair instead of actually defining the repair process.

Parts Manufacturer Approval Standards

Transport Canada commented that life-limited parts are not acceptable candidates for Parts Manufacturer Approval (PMA) and FAA should reconsider PMA standards.

PMA standards are beyond the scope of this rule. Therefore, we did not make any changes in response to this comment.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the amended information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0665.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This final rule consists of regulatory changes that will affect operators and individuals performing repairs. Some of those changes will require additional information collection. Comments received about these requirements and the FAA's responses are discussed earlier in this document, under the Comments section. The new information requirements and the persons who would be required to provide that information are described below.

SUMMARY

Affected entity	Annual hours	Annual cost
Operators	995	$ 49,750
Maintenance Providers	498	37,350

Required Information, Use, and Respondents

Additional recordkeeping will occur, because operators will be required to track the life of the part.

Additional engineering analysis will be performed anytime an affected part is repaired.

One-thousand nine-hundred and ninety (1,990) is the average number of affected aircraft and the corresponding estimated number of engine removals is 498 (1,990 × 25%).

Annual Burden Estimate

Recordkeeping

The recordkeeping cost estimate includes estimates of shop and records personnel time for tracking the part when an engine is removed. The total estimated recordkeeping time requirement is 2 hours per additional part per engine removal.

We calculate the annual recordkeeping hours by multiplying the additional number of parts (1), by the number of hours per part (2). That product is then multiplied by the annual number of engine removals (498), to arrive at the annual hour

estimate of 995. When combined with the burdened labor rate of $50 per hour, the estimated annual cost is $49,750.

Engineering

Additional engineering analysis will be required because operators and maintenance providers handle repairs differently on life-limited parts because of the critical nature of the part. More detailed analysis is performed, in addition to life methodology checks, when a life-limited part is repaired.

We calculated the annual engineering hours of 498 by multiplying the additional number of hours per part (10) by the annual number of engine removals (498) and then by the 10% repair factor. When combined with the burdened labor rate of $75 per hour, the estimated annual cost is $37,350.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. Readers seeking greater detail may read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Benefit-Cost Summary

There will be an overall benefit to manufacturers as a result of having common certification processes in the United States and in Europe. In addition to these benefits, the requirements contained in this final rule will provide an added margin of safety by reducing the number of failures in life-limited parts due to material, manufacturing and service induced anomalies. The FAA believes it is essential to include a limited number of structural static parts in the rules as service experience has demonstrated that failure of these parts can result in hazardous consequences to an aircraft. This final rule will prevent a portion of uncontained engine failures. If only one event is averted over the period of analysis, the benefits will be $11.6 million ($3.5 million present value).

The FAA estimates the total costs from implementing this final rule are roughly $3.6 million ($1.0 million present value). These costs are comprised of engineering and recordkeeping costs.

The estimated benefits of at least $11.6 million ($3.5 million present value) are greater than the estimated cost of $3.6 million ($1.0 million present value). Accordingly, the final rule is cost-beneficial.

Who Is Potentially Affected by This Rulemaking

Part 33 Engine Manufacturers
Operators of future part 33 engines
Entities performing maintenance and repairs

Assumptions and Sources of Information

Period of analysis—2008 through 2050
Discount rate—7%

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

The purpose of this analysis is to provide the reasoning underlying the FAA determination. The FAA has determined that:

- There will not be a significant impact on a substantial number of part 33 manufacturers.
- There will not be a significant impact on a substantial number of small entities that perform maintenance or repairs on affected parts.
- There will not be a significant impact on a substantial number of small operators.

Part 33 manufacturers will receive the certification harmonization savings that will arise as a result of this final rule. There will not be a significant impact on a substantial number of small entities performing maintenance or repairs on affected parts because their expected revenue will be greater than the expected cost. There will not be a significant impact on a substantial number of small airline operators because the ratio of compliance cost to revenue was below 0.03 (three hundredths) of one percent for 49 small entities where data was available.

A full discussion of the agency's regulatory flexibility analysis can be found in the final regulatory evaluation, which has been placed in the docket for this rulemaking.

Therefore, as the FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This final rule considers and incorporates an international standard as the basis of a FAA regulation. Thus this final rule complies with The Trade Agreements Act of 1979 and does not create unnecessary obstacles to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

The FAA has assessed the potential effect of this final rule and determined that it does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

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

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

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

You may search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation safety, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 1. The authority citation for part 33 continues to read as follows:

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

§ 33.14 [Removed]

■ 2. Remove § 33.14.

■ 3. Add new § 33.34 to read as follows:

§ 33.34 Turbocharger rotors.

Each turbocharger case must be designed and constructed to be able to contain fragments of a compressor or turbine that fails at the highest speed that is obtainable with normal speed control devices inoperative.

■ 4. Add new § 33.70 to read as follows:

§ 33.70 Engine life-limited parts.

By a procedure approved by the FAA, operating limitations must be established which specify the maximum allowable number of flight cycles for each engine life-limited part. Engine life-limited parts are rotor and major static structural parts whose primary failure is likely to result in a hazardous engine effect. Typically, engine life-limited parts include, but are not limited to disks, spacers, hubs, shafts, high-pressure casings, and non-redundant mount components. For the purposes of this section, a hazardous engine effect is any of the conditions listed in § 33.75 of this part. The applicant will establish the integrity of each engine life-limited part by:

(a) An engineering plan that contains the steps required to ensure each engine life-limited part is withdrawn from service at an approved life before hazardous engine effects can occur. These steps include validated analysis, test, or service experience which ensures that the combination of loads, material properties, environmental influences and operating conditions, including the effects of other engine parts influencing these parameters, are sufficiently well known and predictable

so that the operating limitations can be established and maintained for each engine life-limited part. Applicants must perform appropriate damage tolerance assessments to address the potential for failure from material, manufacturing, and service induced anomalies within the approved life of the part. Applicants must publish a list of the life-limited engine parts and the approved life for each part in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness as required by § 33.4 of this part.

(b) A manufacturing plan that identifies the specific manufacturing constraints necessary to consistently produce each engine life-limited part with the attributes required by the engineering plan.

(c) A service management plan that defines in-service processes for maintenance and the limitations to repair for each engine life-limited part that will maintain attributes consistent with those required by the engineering plan. These processes and limitations will become part of the Instructions for Continued Airworthiness.

Issued in Washington, DC, on August 27, 2007.

Marion Blakey,

Administrator.

[FR Doc. E7–17369 Filed 8–31–07; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
September 4, 2007

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 33

Airworthiness Standards: Safety Analysis; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Part 33

[Docket No. FAA–2006–25376; Amendment No. 33–24]

RIN 2120–A174

Airworthiness Standards: Safety Analysis

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the safety analysis type certification standard for turbine aircraft engines. This rule establishes a nearly uniform safety analysis standard for turbine aircraft engines certified in the United States under part 33 and in European countries under the Certification Specifications for Engines, thereby simplifying airworthiness approvals for import and export.

DATES: This amendment becomes effective November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Engine and Propeller Directorate, Engine and Propeller Directorate Standards Staff, ANE–110, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone: (781) 238–7757; facsimile: (781) 238–7199; e-mail: *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

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

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

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

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

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for aircraft engines. This rule is within the scope of that authority because it updates the existing regulations for the safety analysis type certification standard for turbine aircraft engines.

Background

On July 18, 2006, the FAA published a notice of proposed rulemaking (NPRM) entitled Airworthiness Standards: Safety Analysis (71 FR 40675). The NPRM proposed to establish engine safety analysis requirements consistent with those adopted by the European Aviation Safety Agency (EASA) in its Certification Specifications for Engines (CS–E).

These new engine safety analysis requirements will ensure that the collective risk from all engine failure conditions is acceptably low. Early coordination between the engine manufacturer and the appropriate FAA certification offices is necessary to determine if more restrictive aircraft standards will apply to the installed engine.

Summary of Comments

The FAA received three comment letters in response to the NPRM. The commenters included General Electric, Rolls-Royce, and Transport Canada Civil Aviation (TCCA).

The commenters supported the rule, but suggested minor changes. Two commenters requested changes to make our regulation more consistent with EASA's regulation. In response, we made changes to paragraphs 33.75(a)(2) and (c) and added a new paragraph (e)(4). A few comments requested changes that go beyond the scope of the proposed rule. We made no changes to the rule in response to these comments.

Discussion of the Final Rule

Section 33.74

We revised § 33.74 to update a reference to § 33.75 that incorporates changes to the hazardous engine effects in § 33.75.

General Electric asserted that an acceptable probability range for a hazardous condition should be added to this section for consistency with the new § 33.75.

We do not agree. The change to § 33.74 is limited to updating the reference to § 33.75 to reflect changes to hazardous engine effects in § 33.75(g)(2)(i) through (g)(2)(vi). The suggested change is beyond the scope of this rulemaking. No changes were made to the rule due to this comment.

Section 33.75

This final rule establishes engine safety analysis requirements consistent with those adopted by the EASA in its Certification Specifications for Engines. These new engine safety analysis requirements will ensure that the collective risk from all engine failure conditions is acceptably low.

Section 33.75(a)

Rolls-Royce noted that the equivalent EASA rule for engine safety analysis requires that any engine part whose failure could result in a hazardous engine effect must be clearly identified.

We agree and changed § 33.75(a)(2) to more clearly identify engine parts whose failure could result in a hazardous engine effect. This change harmonizes § 33.75(a) with CS–E 510(a).

Section 33.75(c)

Rolls-Royce commented that the equivalent EASA rule specifically referenced the CS–E section that

contains integrity requirements. Rolls-Royce believes that the proposed FAA rule will create confusion by not specifying the section where integrity requirements are located.

We agree and changed § 33.75(c) to directly reference part 33 integrity requirements in §§ 33.15, 33.27, and 33.70. This change harmonizes § 33.75(c) with CS–E 510(c).

Section 33.75(e)

TCCA noted that one of the items that a safety analysis depends on is present in the EASA regulations but not in the proposed text of § 33.75(e). TCCA suggested adding a statement to § 33.75(e) referencing ''Flight crew actions to be specified in the operating instructions established under § 33.5.''

We agree with this comment. When the safety analysis depends on action by the flight crew, an appropriate reference should be made to § 33.5. Therefore, we added new paragraph (e)(4) to § 33.75. This change harmonizes § 33.75(e)(4) with CS–E 510(e)(4).

Section 33.75(f)

Rolls Royce noted that it did not understand the significance of the differences between the EASA standard CS–E 510(f) and § 33.75(f) regarding items that must be investigated in the safety analysis. Specifically, CS–E 510(f)(2) lists ''aircraft-supplied data or electrical power'' as an item that must be considered in the safety analysis while § 33.75(f)(2) does not include this item and, instead, references ''manual and automatic controls.''

We believe that the assessment of failures of aircraft data or power required by the EASA rule is beyond the scope of § 33.75, which applies only to single-engine failure assessments. Within § 33.75, the effect of an engine failure is assessed, including the effects of manual and automatic control failures. No changes were made to the rule due to this comment.

Section 33.75(g)

Rolls-Royce requested clarification or deletion of the wording in § 33.75(g), ''Unless otherwise approved by the FAA and stated in the safety analysis'' as there is no corresponding wording in CS–E 510(g).

We recognize the difference in this case between FAA and EASA regulations and believe there is a need to keep the current wording in § 33.75(g). The current wording in § 33.75(g) allows for recognition of cases where the applicant may show that certain defined hazards may be of lesser or greater severity due to the applicant's design. No changes were made to the rule due to this comment.

Section 33.75(g)(1)

Rolls-Royce commented that in some installations (for example, single-engine aircraft) complete loss of power or thrust in a single engine can lead to an event more severe than a minor engine effect. Rolls-Royce requested a change to the rule to allow for this situation.

We do not agree with the requested change. Within part 33, the effects of engine failures are assessed at the engine level. In aircraft certification, how the engine is installed in the aircraft is considered in the evaluation of the effect on the aircraft of engine failures. No changes were made to the rule due to this comment.

Section 33.75(g)(2)

Section 33.75(g)(2) provides a list of effects that will be regarded as hazardous engine effects. TCCA recommends rewording the hazardous engine effects related to engine shutdown to emphasize the need for basic engine fuel control. TCCA also believes that no credit is given for aircraft-installed means to shut down the engine. TCCA, therefore, suggested that FAA change the wording of § 33.75(g)(2)(vii), which currently reads ''Complete inability to shut the engine down,'' to read ''Lose the capability to shut down the engine.''

We disagree with the suggested change in the rule language. The intent of § 33.75(g)(2) is to define hazardous engine effects not to govern the means to control the hazardous engine effect. Section 33.75(a)(1)(i) allows aircraft-level devices assumed to be associated with a typical installation to be taken into account in the safety analysis. No changes were made to the rule due to this comment.

Rulemaking Analyses and Notices

Paperwork Reduction Act

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

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

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Benefit Cost Summary

The FAA estimates that over the next 10 years, the total quantitative benefits

from implementing this final rule are roughly $0.7 million ($0.5 million present value). In contrast to these potential benefits, the estimated cost of compliance is approximately $0.4 million ($0.3 million present value).

Accordingly, this final rule is cost beneficial due to the overall reduction in compliance cost while maintaining the same level of safety.

Who Is Potentially Affected by This Rulemaking

Part 33 Engine Manufacturers.

Assumptions

Period of analysis—2007 through 2016.

Discount rate—7%.

Benefits

We evaluate the benefits that will occur from harmonization and estimate them in terms of cost savings for new and amended type certificates. The cost savings are the result of the number of hours saved from a common certification process.

The total benefits of this final rule are $0.7 million ($0.5 million present value). The benefits are comprised of benefits from certifying new type designs of $82,125 ($59,632 present value) and benefits from certifying amended type designs of $589,875 ($428,314 present value).

Costs

One part 33 turbine engine manufacturer told the FAA that it will incur additional certification costs as a result of this final rule. According to this manufacturer, it will certificate one new engine every two years, and this final rule will require an additional 1,000 engineering hours to certify each engine. The estimated biannual cost equals the 1,000 hours multiplied by the burdened hourly cost for a certification engineer ($75.00). When the biannual costs are summed over a 10-year period, the total costs are $375,000 ($272,291 present value).

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

The FAA uses the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing specifying companies having less than 1,500 employees as small entities in its classification. There are part 33 engine manufacturers who qualify as small businesses but will not incur costs associated with this final rule. These manufacturers will realize a prorated portion of the cost saving resulting from a single harmonized certification procedure. Although one manufacturer will incur costs as a result of this rule, this manufacturer employs more than 1,500 employees and is not considered a small entity. Therefore, as the FAA Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This final rule considers and incorporates an international standard as the basis of a FAA regulation. Thus this final rule complies with the Trade Agreements Act of 1979 and does not create unnecessary obstacles to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $128.1 million in lieu of $100 million.

The FAA has assessed the potential effect of this final rule and determined that it does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

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

Regulations that Significantly Affect Energy Supply, Distribution, or Use

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

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 33 of Title 14 Code of Federal Regulations (14 CFR part 33) as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 1. The authority citation for part 33 continues to read as follows:

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

■ 2. In § 33.5, add paragraph (c) to read as follows:

§ 33.5 Instruction manual for installing and operating the engine.

* * * * *

(c) Safety analysis assumptions. The assumptions of the safety analysis as described in § 33.75(d) with respect to the reliability of safety devices, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures that are outside the control of the engine manufacturer.

■ 3. Revise § 33.74 to read as follows:

§ 33.74 Continued rotation.

If any of the engine main rotating systems continue to rotate after the engine is shutdown for any reason while in flight, and if means to prevent that continued rotation are not provided, then any continued rotation during the maximum period of flight, and in the flight conditions expected to occur with that engine inoperative, may not result in any condition described in § 33.75(g)(2)(i) through (vi) of this part.

■ 4. Revise § 33.75 to read as follows:

§ 33.75 Safety analysis.

(a) (1) The applicant must analyze the engine, including the control system, to assess the likely consequences of all failures that can reasonably be expected to occur. This analysis will take into account, if applicable:

(i) Aircraft-level devices and procedures assumed to be associated with a typical installation. Such assumptions must be stated in the analysis.

(ii) Consequential secondary failures and latent failures.

(iii) Multiple failures referred to in paragraph (d) of this section or that result in the hazardous engine effects defined in paragraph (g)(2) of this section.

(2) The applicant must summarize those failures that could result in major engine effects or hazardous engine effects, as defined in paragraph (g) of this section, and estimate the probability of occurrence of those effects. Any engine part the failure of which could reasonably result in a hazardous engine effect must be clearly identified in this summary.

(3) The applicant must show that hazardous engine effects are predicted to occur at a rate not in excess of that defined as extremely remote (probability range of 10^{-7} to 10^{-9} per engine flight hour). Since the estimated probability for individual failures may be insufficiently precise to enable the applicant to assess the total rate for hazardous engine effects, compliance may be shown by demonstrating that the probability of a hazardous engine effect arising from an individual failure can be predicted to be not greater than 10^{-8} per engine flight hour. In dealing with probabilities of this low order of magnitude, absolute proof is not possible, and compliance may be shown by reliance on engineering judgment and previous experience combined with sound design and test philosophies.

(4) The applicant must show that major engine effects are predicted to occur at a rate not in excess of that defined as remote (probability range of 10^{-5} to 10^{-7} per engine flight hour).

(b) The FAA may require that any assumption as to the effects of failures and likely combination of failures be verified by test.

(c) The primary failure of certain single elements cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous engine effects, then compliance may be shown by reliance on the prescribed integrity requirements of §§ 33.15, 33.27, and 33.70 as applicable. These instances must be stated in the safety analysis.

(d) If reliance is placed on a safety system to prevent a failure from progressing to hazardous engine effects, the possibility of a safety system failure in combination with a basic engine failure must be included in the analysis. Such a safety system may include safety devices, instrumentation, early warning devices, maintenance checks, and other similar equipment or procedures. If items of a safety system are outside the control of the engine manufacturer, the assumptions of the safety analysis with respect to the reliability of these parts must be clearly stated in the analysis and identified in the installation instructions under § 33.5 of this part.

(e) If the safety analysis depends on one or more of the following items, those items must be identified in the analysis and appropriately substantiated.

(1) Maintenance actions being carried out at stated intervals. This includes the verification of the serviceability of items that could fail in a latent manner. When necessary to prevent hazardous engine effects, these maintenance actions and intervals must be published in the instructions for continued airworthiness required under § 33.4 of this part. Additionally, if errors in maintenance of the engine, including the control system, could lead to hazardous engine effects, the appropriate procedures must be included in the relevant engine manuals.

(2) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate manual.

(3) The provisions of specific instrumentation not otherwise required.

(4) Flight crew actions to be specified in the operating instructions established under § 33.5.

(f) If applicable, the safety analysis must also include, but not be limited to, investigation of the following:

(1) Indicating equipment;

(2) Manual and automatic controls;

(3) Compressor bleed systems;

(4) Refrigerant injection systems;

(5) Gas temperature control systems;

(6) Engine speed, power, or thrust governors and fuel control systems;

(7) Engine overspeed, overtemperature, or topping limiters;

(8) Propeller control systems; and

(9) Engine or propeller thrust reversal systems.

(g) Unless otherwise approved by the FAA and stated in the safety analysis, for compliance with part 33, the following failure definitions apply to the engine:

(1) An engine failure in which the only consequence is partial or complete loss of thrust or power (and associated engine services) from the engine will be regarded as a minor engine effect.

(2) The following effects will be regarded as hazardous engine effects:

(i) Non-containment of high-energy debris;

(ii) Concentration of toxic products in the engine bleed air intended for the cabin sufficient to incapacitate crew or passengers;

(iii) Significant thrust in the opposite direction to that commanded by the pilot;

(iv) Uncontrolled fire;

(v) Failure of the engine mount system leading to inadvertent engine separation;

(vi) Release of the propeller by the engine, if applicable; and

(vii) Complete inability to shut the engine down.

(3) An effect whose severity falls between those effects covered in paragraphs (g)(1) and (g)(2) of this section will be regarded as a major engine effect.

■ 5. Amend § 33.76 to revise paragraph (b)(3) to read as follows:

§ 33.76 Bird ingestion.

* * * * *

(b) * * *

(3) Ingestion of a single large bird tested under the conditions prescribed in this section may not result in any condition described in § 33.75(g)(2) of this part.

* * * * *

Issued in Washington, DC on August 27, 2007.

Marion Blakey,

Administrator.

[FR Doc. E7–17372 Filed 8–31–07; 8:45 am]

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Vol. 72, No. 170

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50643–50868 4

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 4, 2007

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
State and Federal Commercial Fishing Vessel Permit Programs; reconciliation; published 8-3-07
Marine mammals:
Sea turtle conservation—
Observer requirements for fisheries; published 8-3-07

COMMODITY FUTURES TRADING COMMISSION
Foreign futures and options transactions:
Exemptions—
Singapore Derivatives Trading Ltd.; published 9-4-07

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Kentucky; published 8-3-07
Superfund program:
National oil and hazardous substances contingency plan priorities list; published 7-5-07

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General and plastic surgery devices—
Absorbable polyhydroxybutyrate surgical suture; classification; published 8-3-07

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Maryland; published 8-2-07

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Idaho springsnail; removal from list; published 8-6-07

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Records preservation program and appendices; record retention guidelines; catastrophic act preparedness guidelines; published 8-2-07

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 7-30-07
Pilatus Aircraft Ltd.; published 7-30-07

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Safe, Accountable, Flexible, Efficient Transportation Equity Act; implementation—
Motor Carrier Safety Assistance Program; State compliance plans, etc.; published 7-5-07

TREASURY DEPARTMENT
Thrift Supervision Office
Savings and loan holding companies; prohibited service
Temporary exemption; expiration date extended; published 9-4-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Prunes (fresh) grown in Washington and Oregon; comments due by 9-11-07; published 7-13-07 [FR E7-13583]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Veterinary services, user fees; comments due by 9-14-07; published 7-17-07 [FR E7-13775]
Genetically engineered organisms and products:
Introductions of plants genetically engineered to encode compounds for industrial use; permit requirements; comments due by 9-11-07; published 7-17-07 [FR 07-03474]
Correction; comments due by 9-11-07; published 7-20-07 [FR C7-03474]

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Bovine spongiform encephalopathy policies—
Specified risk materials use for human food prohibition; non-ambulatory disabled cattle disposition requirements; stunning devices use prohibition; comments due by 9-11-07; published 7-13-07 [FR 07-03350]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Rural Development Electric Programs borrowers; accounting requirements; comments due by 9-11-07; published 7-13-07 [FR E7-13389]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Shallow-water species; comments due by 9-11-07; published 8-28-07 [FR E7-17035]

COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Registered entities and exempt commercial markets; comments due by 9-12-07; published 8-13-07 [FR E7-15370]
Registration:
Futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants—
Associated persons and principals; termination; comments due by 9-13-07; published 8-14-07 [FR E7-15869]

DEFENSE DEPARTMENT
Air Force Department
Military training and schools:
Air Force Academy Preparatory School; application and selection, disenrollment, and assignment procedures; comments due by 9-10-07; published 7-12-07 [FR E7-13250]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Wholesale competition in regions with organized electric markets; comments due by 9-14-07; published 8-8-07 [FR E7-15276]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Kansas; comments due by 9-10-07; published 8-9-07 [FR E7-15255]
Louisiana; comments due by 9-14-07; published 8-15-07 [FR E7-16044]
Missouri; comments due by 9-10-07; published 8-9-07 [FR E7-15258]
Virginia; comments due by 9-12-07; published 8-13-07 [FR E7-15587]
Grants and other Federal assistance:
Tribal Clean Air Act authority—
St. Regis Mohawk Reservation, NY; source-specific Federal implementation plan; comments due by 9-13-07; published 8-14-07 [FR E7-15921]
Hazardous waste program authorizations:
Arkansas; comments due by 9-14-07; published 8-15-07 [FR E7-16009]
Florida; comments due by 9-10-07; published 8-10-07 [FR E7-15671]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorpropham, etc.; comments due by 9-10-07; published 7-11-07 [FR E7-13420]
Cymoxanil; comments due by 9-10-07; published 7-11-07 [FR E7-13419]
Indoxacarb; comments due by 9-10-07; published 7-11-07 [FR E7-13339]
Solid wastes:
Hazardous waste; identification and listing—
Emission-comparable fuel; Resource Conservation

and Recovery Act exclusion expansion; comments due by 9-14-07; published 7-19-07 [FR E7-14006]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 9-10-07; published 8-9-07 [FR E7-15331]

National oil and hazardous substances contingency plan priorities; list; comments due by 9-13-07; published 8-14-07 [FR E7-15891]

National oil and hazardous substances contingency plan priorities list; comments due by 9-13-07; published 8-14-07 [FR E7-15897]

FARM CREDIT ADMINISTRATION

Farm credit system:

Disclosure to shareholders—

Annual report; preparation and distribution; comments due by 9-13-07; published 8-14-07 [FR E7-15842]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift Savings Plan:

Employee contribution election and contribution allocations, etc.; comments due by 9-10-07; published 8-10-07 [FR E7-15635]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Hospital outpatient prospective payment system and 2008 CY payment rates; ambulatory service center procedures; comments due by 9-14-07; published 8-2-07 [FR 07-03509]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Administrative rulings and decisions:

Ozone-depleting substances use; essential-use designations—

Oral pressurized metered-dose inhalers containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol, etc.; removed; comments due by 9-10-07; published 8-7-07 [FR E7-15372]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Pollution:

Oil spill liability—

Landowner defenses; standards and practices for all appropriate inquiries; comments due by 9-10-07; published 6-12-07 [FR E7-11110]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Bear Valley sandwort, etc.; comments due by 9-13-07; published 8-14-07 [FR E7-15765]

Findings on petitions, etc.—

Emperor penguin, etc.; comments due by 9-10-07; published 7-11-07 [FR 07-03355]

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 9-10-07; published 8-31-07 [FR 07-04235]

Seasons, limits and shooting hours; establishment, etc.; comments due by 9-10-07; published 8-31-07 [FR 07-04236]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Combat Methamphetamine Epidemic Act of 2005:

Importation and production quotas for ephedrine, pseudoephedrine, and phenylpropanolamine; comments due by 9-10-07; published 7-10-07 [FR E7-13377]

JUSTICE DEPARTMENT

Child Protection Restoration and Penalties Enhancement Act of 1990 and Protect Act; record-keeping and record inspection provisions:

Visual depictions of sexually explicit conduct; record-keeping, labeling, and inspection requirements; comments due by 9-10-07; published 7-12-07 [FR E7-13500]

LABOR DEPARTMENT

Employee Benefits Security Administration

Employee Retirement Income Security Act:

Amendments to civil penalties; comments due by 9-10-07; published 8-10-07 [FR E7-15567]

NUCLEAR REGULATORY COMMISSION

Agency regulations; miscellaneous corrections; comments due by 9-10-07; published 8-10-07 [FR E7-15554]

Byproduct material; medical use:

Corrections and clarifications; comments due by 9-12-07; published 8-13-07 [FR E7-15762]

Small business size standards; revision; comments due by 9-10-07; published 8-10-07 [FR E7-15555]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Compensatory employee stock options; registration requirements exemption; comments due by 9-10-07; published 7-10-07 [FR E7-13324]

Persistent fails to deliver in certain equity securities; reduction; amendments (Regulation SHO); comments due by 9-13-07; published 8-14-07 [FR E7-15709]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Disability claims adjudication; administrative review process—

Federal reviewing official review level, new claims suspension; medical and vocational expert system, role changes; and future demonstration projects; comments due by 9-14-07; published 8-15-07 [FR E7-16071]

SPECIAL COUNSEL OFFICE

Privacy Act; implementation; comments due by 9-13-07; published 8-14-07 [FR E7-15839]

TRANSPORTATION DEPARTMENT

Economic regulations:

Oversales and denied boarding compensation; comments due by 9-10-07; published 7-10-07 [FR E7-13365]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic and general operating rules:

Amateur rocket activities; requirements; comments due by 9-12-07; published 6-14-07 [FR E7-11263]

Correction; comments due by 9-12-07; published 6-28-07 [FR E7-12463]

Airworthiness directives:

Airbus; comments due by 9-10-07; published 8-16-07 [FR E7-16112]

Alpha Aviation Design Ltd.; comments due by 9-12-07; published 8-13-07 [FR E7-15794]

Bell Helicopter Textron Canada; comments due by 9-14-07; published 7-16-07 [FR 07-03434]

Bell Helicopter Textron Canada Ltd.; comments due by 9-11-07; published 7-13-07 [FR E7-13607]

Boeing; comments due by 9-13-07; published 7-30-07 [FR E7-14638]

Eurocopter France; comments due by 9-11-07; published 7-13-07 [FR E7-13624]

Hawker Beechcraft Corp.; comments due by 9-13-07; published 7-30-07 [FR E7-14637]

Trimble or FreeFlight Systems; comments due by 9-11-07; published 7-13-07 [FR E7-13606]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety:

Locomotive horns use at highway-rail grade crossings; sounding requirements; technical amendments; comments due by 9-10-07; published 8-9-07 [FR 07-03871]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

School bus passenger protection; seat belts on large school buses; meeting; comments due by 9-10-07; published 6-4-07 [FR E7-10568]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Hazardous materials:

Conversion of special permits into regulations of general applicability;

comments due by 9-14-07; published 7-16-07 [FR E7-13579]

Pipeline safety:

Hazardous liquid pipelines transporting ethanol, ethanol blends, and other biofuels; policy statement; comments due by 9-10-07; published 8-10-07 [FR E7-15615]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Built-in gains and losses; cross-reference; comments due by 9-12-07; published 6-14-07 [FR E7-11444]

Business aircraft; entertainment use deductions; hearing; comments due by 9-13-07; published 6-15-07 [FR E7-11445]

VETERANS AFFAIRS DEPARTMENT

Medical benefits:

Hospital care and medical services during certain disasters or emergencies; comments due by 9-10-07; published 7-12-07 [FR E7-13278]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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.

H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the ''Willye B. White Post Office Building''. (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service located at 14536 State Route 136 in Cherry Fork, Ohio, as the ''Staff Sergeant Omer T. 'O.T.' Hawkins Post Office''. (Aug. 9, 2007; 121 Stat. 570)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–062–00001–4)	5.00	[4] Jan. 1, 2007
2	(869–062–00002–2)	5.00	Jan. 1, 2007
3 (2006 Compilation and Parts 100 and 102)	(869–062–00003–1)	35.00	[1] Jan. 1, 2007
4	(869–062–00004–9)	10.00	[5] Jan. 1, 2007
5 Parts:			
1–699	(869–062–00005–7)	60.00	Jan. 1, 2007
700–1199	(869–062–00006–5)	50.00	Jan. 1, 2007
1200–End	(869–062–00007–3)	61.00	Jan. 1, 2007
6	(869–062–00008–1)	10.50	Jan. 1, 2007
7 Parts:			
1–26	(869–062–00009–0)	44.00	Jan. 1, 2007
27–52	(869–062–00010–3)	49.00	Jan. 1, 2007
53–209	(869–062–00011–1)	37.00	Jan. 1, 2007
210–299	(869–062–00012–0)	62.00	Jan. 1, 2007
300–399	(869–062–00013–8)	46.00	Jan. 1, 2007
400–699	(869–062–00014–6)	42.00	Jan. 1, 2007
700–899	(869–062–00015–4)	43.00	Jan. 1, 2007
900–999	(869–062–00016–2)	60.00	Jan. 1, 2007
1000–1199	(869–062–00017–1)	22.00	Jan. 1, 2007
1200–1599	(869–062–00018–9)	61.00	Jan. 1, 2007
1600–1899	(869–062–00019–7)	64.00	Jan. 1, 2007
1900–1939	(869–062–00020–1)	31.00	Jan. 1, 2007
1940–1949	(869–062–00021–9)	50.00	[5] Jan. 1, 2007
1950–1999	(869–062–00022–7)	46.00	Jan. 1, 2007
2000–End	(869–062–00023–5)	50.00	Jan. 1, 2007
8	(869–062–00024–3)	63.00	Jan. 1, 2007
9 Parts:			
1–199	(869–062–00025–1)	61.00	Jan. 1, 2007
200–End	(869–062–00026–0)	58.00	Jan. 1, 2007
10 Parts:			
1–50	(869–062–00027–8)	61.00	Jan. 1, 2007
51–199	(869–062–00028–6)	58.00	Jan. 1, 2007
200–499	(869–062–00029–4)	46.00	Jan. 1, 2007
500–End	(869–066–00030–8)	62.00	Jan. 1, 2007
11	(869–062–00031–6)	41.00	Jan. 1, 2007
12 Parts:			
1–199	(869–062–00032–4)	34.00	Jan. 1, 2007
200–219	(869–062–00033–2)	37.00	Jan. 1, 2007
220–299	(869–062–00034–1)	61.00	Jan. 1, 2007
300–499	(869–062–00035–9)	47.00	Jan. 1, 2007
500–599	(869–062–00036–7)	39.00	Jan. 1, 2007
600–899	(869–062–00037–5)	56.00	Jan. 1, 2007
900–End	(869–062–00038–3)	50.00	Jan. 1, 2007
13	(869–062–00039–1)	55.00	Jan. 1, 2007
14 Parts:			
1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–062–00041–3)	61.00	Jan. 1, 2007
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
1–199	(869–062–00051–1)	50.00	Apr. 1, 2007
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
1–399	(869–062–00054–5)	62.00	Apr. 1, 2007
400–End	(869–062–00055–3)	26.00	Apr. 1, 2007
19 Parts:			
1–140	(869–062–00056–1)	61.00	Apr. 1, 2007
141–199	(869–062–00057–0)	58.00	Apr. 1, 2007
200–End	(869–062–00058–8)	31.00	Apr. 1, 2007
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
500–End	(869–062–00061–8)	63.00	Apr. 1, 2007
21 Parts:			
1–99	(869–062–00062–6)	40.00	Apr. 1, 2007
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–062–00064–2)	50.00	Apr. 1, 2007
200–299	(869–062–00065–1)	17.00	Apr. 1, 2007
300–499	(869–062–00066–9)	30.00	Apr. 1, 2007
500–599	(869–062–00067–7)	47.00	Apr. 1, 2007
600–799	(869–062–00068–5)	17.00	Apr. 1, 2007
800–1299	(869–062–00069–3)	60.00	Apr. 1, 2007
1300–End	(869–062–00070–7)	25.00	Apr. 1, 2007
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–062–00072–3)	45.00	Apr. 1, 2007
23	(869–062–00073–7)	45.00	Apr. 1, 2007
24 Parts:			
0–199	(869–062–00074–0)	60.00	Apr. 1, 2007
200–499	(869–062–00075–8)	50.00	Apr. 1, 2007
500–699	(869–062–00076–6)	30.00	Apr. 1, 2007
700–1699	(869–062–00077–4)	61.00	Apr. 1, 2007
1700–End	(869–062–00078–2)	30.00	Apr. 1, 2007
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–062–00080–4)	49.00	Apr. 1, 2007
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
§§ 1.301–1.400	(869–062–00083–9)	47.00	Apr. 1, 2007
§§ 1.401–1.440	(869–062–00084–7)	56.00	Apr. 1, 2007
§§ 1.441–1.500	(869–062–00085–5)	58.00	Apr. 1, 2007
§§ 1.501–1.640	(869–062–00086–3)	49.00	Apr. 1, 2007
§§ 1.641–1.850	(869–062–00087–1)	61.00	Apr. 1, 2007
§§ 1.851–1.907	(869–062–00088–0)	61.00	Apr. 1, 2007
§§ 1.908–1.1000	(869–062–00089–8)	60.00	Apr. 1, 2007
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–062–00091–0)	58.00	Apr. 1, 2007
§§ 1.1551–End	(869–062–00092–8)	50.00	Apr. 1, 2007
2–29	(869–062–00093–6)	60.00	Apr. 1, 2007
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[7] Apr. 1, 2007
50–299	(869–062–00096–1)	42.00	Apr. 1, 2007

Title	Stock Number	Price	Revision Date
300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–062–00099–5)	17.00	Apr. 1, 2007
27 Parts:			
1–39	(869–062–00100–2)	64.00	Apr. 1, 2007
40–399	(869–062–00101–1)	64.00	Apr. 1, 2007
400–End	(869–062–00102–9)	18.00	Apr. 1, 2007
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–062–00105–3)	50.00	[9] July 1, 2007
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–062–00107–0)	61.00	[9] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
*1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
*1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
*1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[8] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
*101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		332.00	2006
Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2007

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
September 4	Sep 19	Oct 4	Oct 19	Nov 5	Dec 3
September 5	Sep 20	Oct 5	Oct 22	Nov 5	Dec 4
September 6	Sep 21	Oct 9	Oct 22	Nov 5	Dec 5
September 7	Sep 24	Oct 9	Oct 22	Nov 6	Dec 6
September 10	Sep 25	Oct 10	Oct 25	Nov 9	Dec 10
September 11	Sep 26	Oct 11	Oct 26	Nov 13	Dec 10
September 12	Sep 27	Oct 12	Oct 29	Nov 13	Dec 11
September 13	Sep 28	Oct 15	Oct 29	Nov 13	Dec 12
September 14	Oct 1	Oct 15	Oct 29	Nov 13	Dec 13
September 17	Oct 2	Oct 17	Nov 1	Nov 16	Dec 17
September 18	Oct 3	Oct 18	Nov 2	Nov 19	Dec 17
September 19	Oct 4	Oct 19	Nov 5	Nov 19	Dec 18
September 20	Oct 5	Oct 22	Nov 5	Nov 19	Dec 19
September 21	Oct 9	Oct 22	Nov 5	Nov 20	Dec 20
September 24	Oct 9	Oct 24	Nov 8	Nov 23	Dec 24
September 25	Oct 10	Oct 25	Nov 9	Nov 26	Dec 24
September 26	Oct 11	Oct 26	Nov 13	Nov 26	Dec 26
September 27	Oct 12	Oct 29	Nov 13	Nov 26	Dec 26
September 28	Oct 15	Oct 29	Nov 13	Nov 27	Dec 27