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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket Nos. AMS–FV–07–0134; FV08–985–1 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2007–2008 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year. This rule increases the Native spearmint oil salable quantity from 1,162,336 pounds to 1,172,956 pounds, and the allotment percentage from 48 percent to 53 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2007, through May 31, 2008; comments received by February 15, 2008 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan M. Coleman, Marketing Specialist, or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail: Sue.Coleman@usda.gov* or *GaryD.Olson@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 2007–2008 marketing year, which ends on May 31, 2008. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2007–2008 marketing year were recommended by the Committee at its October 4, 2006, meeting. The Committee recommended salable quantities of 886,667 pounds and 1,062,336 pounds, and allotment percentages of 45 percent and 48 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on January 22, 2007 (71 FR 2639). Comments on the proposed rule were solicited from interested persons until February 21, 2007. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2007–2008 marketing year was published in the **Federal Register** on March 29, 2007 (72 FR 14657).

This rule revises the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year, which ends on May 31, 2008. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee, with seven of its eight members present, met on October 17, 2007, and unanimously recommended that the 2007–2008 Native spearmint oil allotment percentage be increased by 5 percent.

Thus, taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantities, this rule increases the 2007–

2008 marketing year salable quantities and allotment percentages for Native spearmint oil to 1,172,956 pounds and 53 percent.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The total industry allotment base for Native spearmint oil for the 2007–2008 marketing year was estimated by the Committee at the October 4, 2006, meeting at 2,213,200 pounds. This was later revised at the beginning of the 2007–2008 marketing year to 2,213,124 pounds to reflect a 2006–2007 marketing year loss of 76 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,213,124 pounds is applied to the originally established allotment percentage of 48 percent, the initially established 2007–2008 marketing year salable quantity of 1,062,336 pounds is effectively modified to 1,062,300.

By increasing the salable quantity and allotment percentage, this rule makes an additional amount of Native spearmint oil available by releasing oil from the reserve pool. As of October 17, 2007, the reserve pool is estimated at 195,790 pounds. When applied to each individual producer, the allotment percentage increase allows each producer to take up to an amount equal to their allotment base from their reserve for this respective class of oil. In addition, pursuant to §§ 985.56 and 985.156, producers with excess oil are not able to transfer such excess oil to other producers to fill deficiencies in annual allotments after October 31 of each marketing year.

The following table summarizes the Committee recommendations:

Native Spearmint Oil Recommendation

(A) Estimated 2007–2008 Allotment Base—2,213,200 pounds. This is the estimate on which the original 2007–2008 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2007–2008 Allotment Base—2,213,124 pounds. This is 76 pounds less than the estimated allotment base of 2,213,200 pounds. This is less because some producers failed to produce all of their 2006–2007 allotment.

(C) Original 2007–2008 Allotment Percentage—48 percent. This was unanimously recommended by the Committee on October 4, 2006.

(D) Original 2007–2008 Salable Quantity—1,062,336 pounds. This figure is 48 percent of the estimated 2007–2008 allotment base of 2,213,200 pounds.

(E) Adjustment to the Original 2007–2008 Salable Quantity—1,062,300 pounds. This figure reflects the salable quantity initially available after the beginning of the 2006–2007 marketing year due to the 76 pound reduction in the industry allotment base to 2,213,124 pounds.

(F) First Revision to the 2007–2008 Salable Quantity and Allotment Percentage:

(1) Increase in Allotment Percentage—5 percent. The Committee recommended a 5 percent increase at its October 17, 2007, meeting.

(2) 2007–2008 Allotment Percentage—53 percent. This figure is derived by adding the increase of 5 percent to the original 2007–2008 allotment percentage of 48 percent.

(3) Calculated Revised 2007–2008 Salable Quantity—1,172,956 pounds. This figure is 53 percent of the revised 2007–2008 allotment base of 2,213,124 pounds.

(4) Computed Increase in the 2007–2008 Salable Quantity—110,656 pounds. This figure is 5 percent of the revised 2007–2008 allotment base of 2,213,124 pounds.

The 2007–2008 marketing year began on June 1, 2007, with an estimated carry-in of 83,417 pounds of salable oil. When the estimated carry-in is added to the revised 2007–2008 salable quantity of 1,062,300 pounds, a total estimated available supply for the 2007–2008 marketing year of 1,145,717 pounds results. Of this amount, 990,076 pounds of oil has already been sold or committed for the 2007–2008 marketing year, which leaves 155,641 pounds available for sale.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee Manager from handlers and producers who were not in attendance. By increasing the 2007–2008 salable percentage by five percent, an estimated additional 110,656 pounds will be made available to the market. This amount combined with the 155,641 pounds currently available, will make a total of 266,297 pounds available to the market and bring the total available supply for the year to 1,256,373 pounds. The handlers are estimating that the demand for 2007–2008 year will be 1,200,000 pounds, which will leave 56,373 pounds as a carry out at the end of the year. However, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2007–2008 marketing year, it had anticipated that the year would end with an ample available supply. Therefore, the industry may not be able to meet market demand without this increase.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2007–2008 marketing year should be increased to 1,172,956 pounds and 53 percent, respectively.

This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2007–2008 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2007–2008 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

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

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

There are seven spearmint oil handlers subject to regulation under the order, and approximately 58 producers of Scotch spearmint oil and approximately 92 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that one of the seven handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 58 Scotch spearmint oil producers and 22 of the 92 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This rule further increases the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2007–2008 marketing year, which ends on May 31, 2008. This rule increases the 2007–2008 marketing year salable quantity and allotment percentage for Native spearmint oil to 1,172,956 and 53 percent.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended allotment percentages, upon which 2007–2008 producer allotments are based, are 45 percent for Scotch and 53 percent for Native (a 5 percentage point increase from the original allotment percentage of 48 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint oil. The econometric model estimated a $1.40 decline in the season average producer price per pound of Far West spearmint oil (combining the two classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used.

A previous price decline estimate of $1.45 per pound was based on the original 2007–2008 allotment percentages (45 percent for Scotch and 48 percent for Native) published in the **Federal Register** on March 29, 2007 (72 FR 14657). The revised estimate reflects the impact of the additional quantities that will be made available by this rule compared to the original allotment percentages. In actuality, this rule will make an amount lower than 110,656 pounds of Native spearmint oil available, since not all producers have reserve pool oil. Loosening the volume control restriction resulted in the smaller price decline estimate of $1.40 per pound.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meeting, the Committee considered alternatives to each of the increases. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and

participate in Committee deliberations. Like all Committee meetings, the October 17, 2007, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on a change to the salable quantity and allotment percentage for Native spearmint oil for the 2007–2008 marketing year. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2008; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the 2007–2008 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.226, paragraph (b) is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.226 Salable quantities and allotment percentages—2007–2008 marketing year.

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,172,956 pounds and an allotment percentage of 53 percent.

Dated: December 12, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–6075 Filed 12–13–07; 12:42 pm]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A; Docket No. R–1304]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its Regulation A, effective December 12, 2007, to allow the Board to authorize a temporary Term Auction Facility (TAF) under section 10B of the Federal Reserve Act. A TAF is a credit facility that allows a depository institution to obtain an advance from its local Federal Reserve Bank at an interest rate that is determined as the result of an auction. A TAF is expected to permit depository institutions to obtain credit on a secured basis from the Federal Reserve at rates that meet the market demand for credit of relatively short terms. The Board is also announcing the immediate authorization of a TAF, subject to the terms and conditions specified herein.

DATES: The amendments to part 201 (Regulation A) are effective December 12, 2007.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, General Counsel (202/452–3583); Heatherun Sophia Allison, Senior Counsel (202/452–3565); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Section 10B of the Federal Reserve Act (12 U.S.C. 347b(a)) authorizes any Federal Reserve Bank, under rules and regulations prescribed by the Board, to make advances to depository institutions that have maturities of not more than four months and that are secured to the satisfaction of the Federal Reserve Bank. Under this authority, the Board has determined to amend Regulation A, effective immediately, to authorize a TAF, subject to such further terms and conditions as the Board may specify from time to time in connection with the TAF. The interest rate at which credit is extended under a TAF will be determined through an auction procedure. A TAF is expected to permit depository institutions to obtain credit on a secured basis from the Federal Reserve at rates that meet the market demand for credit of relatively short terms.

Final Rule. The final rule provides that advances under a TAF will be made only to depository institutions that are in generally sound financial condition, are expected to remain in that condition during the term of the advance and are eligible to receive advances under section 10B of the Federal Reserve Act. The final rule also provides that credit extended under a TAF will be granted at the rate based on the auction. The final rule further provides that the terms and conditions applicable to a TAF will be specified by the Board from time to time in connection with the TAF. Those terms and conditions may include but are not limited to requirements governing the condition of participants, size and duration of the facility, minimum and maximum bid amounts, term of advance, use of proceeds, and schedule of auction dates. All institutions that seek credit under the TAF agree to be bound by the terms and conditions of the TAF as set out in the documents issued by the Board governing the TAF. The Board may appoint one or more Reserve Banks or others to conduct the auction. The amendment to Regulation A authorizing the TAF is being adopted in response to current market conditions as discussed below and is intended to be a temporary change. Consequently, the final rule provides that the TAF will end on such date as set by the Board. In the event the Board determines to adopt these changes to Regulation A on a permanent basis, the Board expects to seek public comment on the changes.

Immediate Authorization of TAF. The Board has determined immediately to

authorize a TAF. Unless otherwise provided, the TAF will be subject to the following terms and conditions. The first auction will take place during the week of December 17, 2007, with a second auction occurring on or about December 20, 2007. Additional auctions will be held beginning in January 2008, until and unless otherwise determined by the Board. The amount available at each auction, a minimum bid amount, a maximum bid amount, and a minimum bid rate will be announced before each auction. The rate determined by the auction will be announced after completion of the auction, and will in general be the maximum bid rate that allows advances to be extended up to the maximum amount allocated for that week's auction. Bidding schedules will be announced in advance of each auction.

The auction will be open to depository institutions that are in generally sound financial condition and are expected to remain so during the term of the advance. Unless otherwise provided, any eligible depository institution that wishes to participate in the TAF may submit to the Reserve Bank in whose district the institution is located (local Reserve Bank) no more than two bids containing the amount of advances it is seeking and its interest rate bids. The auction will be administered by an auction agent appointed by the Board.

All advances to a depository institution made under the TAF will be made by its local Reserve Bank and must be secured to the satisfaction of the local Reserve Bank. Advances made under the TAF are expected to be for a term of at least 28 days, as set at the time of the auction. An advance awarded under the TAF is an ''Advance,'' as such term is defined in Operating Circular No. 10, as amended and supplemented from time to time (OC–10) and shall be governed by OC–10 (including, without limitation, provisions relating to interest, the addition or substitution of Collateral, repayment of Advances and remedies upon the occurrence of an Event of Default), except that no depository institution may elect to prepay an advance made under the TAF before the stated maturity date. Repayment of an advance prior to stated maturity, or change in the terms of the advance, may be required in the event that the depository institution does not remain in generally sound financial condition during the term of the loan, or as otherwise provided by the Reserve Bank or Board in the notices or other documentation regarding advances under the TAF. An advance under the TAF shall also be subject to the terms and conditions of the TAF as set from time to time by the Board. All advances under the TAF are extended at the discretion of the local Reserve Bank, and neither the TAF terms and conditions nor Regulation A afford any depository institution any legal right to bid in the TAF or to receive any advance from any Reserve Bank.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new auction credit facility will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

In accordance with the Administrative Procedure Act (APA), the Board has determined that prior notice and opportunity for public comment on this amendment to Regulation A is not required. First, notice and comment are not required for matters relating to public loans.[1] The TAF implements the System's lending authority. Second, the Board believes that good cause supports a finding in this case that delay in adopting the amendments to Regulation A would be impracticable, unnecessary and contrary to the public interest.[2] Short-term bank funding markets have been strained for some time and these pressures have intensified in recent weeks. These developments have occurred against the backdrop of considerable tightening in overall financial conditions. The current difficulties in bank funding markets could contribute to a further deterioration in financial market conditions and tightening of credit availability that, in turn, could adversely affect prospects for economic growth. In these circumstances, the Board believes that any delay in implementing a temporary Term Auction Facility to allow for a full public comment period could well prove contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

[1] 5 U.S.C. 553(a)(2).

[2] 5 U.S.C. 553(b)(3)(B).

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.4, a new paragraph (e) is added to read as follows:

§ 201.4 Availability and terms of credit.

(e) *Term auction facility.* (1) A Federal Reserve Bank may make an advance to a depository institution pursuant to an auction conducted under this paragraph and at the rate specified in § 201.51(e) if, in the judgment of the Reserve Bank, the depository institution is in generally sound financial condition and is expected to remain in that condition during the term of the advance. An auction under this paragraph shall be conducted subject to such conditions, including conditions regarding the participants, size and duration of the facility, minimum bid amount, maximum bid amount, term of advance, minimum bid rate, use of proceeds, and schedule of auction dates, as the Board may establish from time to time in connection with the term auction facility. The Board may appoint one or more Reserve Banks or others to conduct the auction.

(2) Authorization for the term auction facility established by § 201.4(e)(1) shall expire on such date as set by the Board.

■ 3. In § 201.51, a new paragraph (e) is added to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.

* * * * *

(e) *Term auction facility.* The interest rate on advances to depository institutions made pursuant to an auction under § 201.4(e) is the rate at which all bids at that auction may be fulfilled, up to the maximum auction amount and subject to any minimum bid rate and other conditions as set by the Board.

By order of the Board of Governors of the Federal Reserve System, December 12, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–24315 Filed 12–14–07; 8:45 am]

BILLING CODE 6210–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28432; Directorate Identifier 2007–CE–051–AD; Amendment 39–15303; AD 2007–26–01]

RIN 2120–AA64

Airworthiness Directives; Thrush Aircraft, Inc. Model S2R Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Thrush Aircraft, Inc. (Thrush) Model S2R series airplanes. This AD requires you to do repetitive visual inspections of the vertical and horizontal stabilizer attach fitting, attach fitting bolts, and the vertical fin aft spar for cracks or corrosion. This AD also requires immediate replacement of the vertical and horizontal stabilizer attach fittings and attach fitting bolts if cracked or corroded parts are found, and the inspection of the vertical fin aft spar with repair or replacement if cracks or corrosion are found. This AD requires the eventual replacement of the vertical and horizontal stabilizer attach fittings and attach fitting bolts if no corrosion or cracks are found as terminating action for the repetitive inspections. This AD results from reports of cracks in the empennage of Thrush S2R series airplanes. We are issuing this AD to detect and correct these cracks, which could cause the vertical stabilizer to lose structural integrity. This failure could lead to loss of control.

DATES: This AD becomes effective on January 22, 2008.

On January 22, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Thrush Aircraft, Inc., P.O. Box 3149, 300 Old Pretoria Road, Albany, Georgia 31706–3149; telephone: 229–883–1440; facsimile: 229–436–4856; or on the Internet at: *www.thrushaircraft.com*.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2007–28432; Directorate Identifier 2007–CE–051–AD.

FOR FURTHER INFORMATION CONTACT ONE OF THE FOLLOWING:

—Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6078; *fax:* (770) 703–6097; *e-mail: cindy.lorenzen@faa.gov;* or

—Mike Cann, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6038; *facsimile:* (770) 703–6097; *e-mail: michael.cann@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 26, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain S2R series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 26, 2007 (72 FR 41042). The NPRM proposed to require repetitive visual inspections of the vertical and horizontal stabilizer attach fitting, attach fitting bolts, and the vertical fin aft spar for corrosion or cracks. The NPRM also proposed to require immediate replacement of the vertical and horizontal stabilizer attach fittings and attach fitting bolts if cracked or corroded parts are found, and inspection of the vertical fin aft spar with repair or replacement if cracks or corrosion are found. This AD requires the eventual replacement of the vertical and horizontal stabilizer attach fittings and attach fitting bolts if no corrosion or cracks are found as terminating action for the repetitive inspections.

Comments

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

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 910 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work-hours × $80 per hour = $640	Not applicable	$640	$582,400

We estimate the following costs to do any necessary replacements of the vertical fin aft spar that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
12 work-hours × $80 per hour = $960	$3,800	$4,760

We estimate the following costs to replace the vertical and horizontal stabilizer attach fittings and attachment bolt:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
30 work-hours × $80 per hour = $2,400	$1,550	$3,950	$3,594,500

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 AD.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28432; Directorate Identifier 2007-CE–051-AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–01 Thrush Aircraft, Inc.: Amendment 39–15303; Docket No. FAA–2007–28432; Directorate Identifier 2007–CE–051–AD.

Effective Date

(a) This AD becomes effective on January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category and are equipped with metal empennage part numbers (P/N) 40220 or 95400 (applies to serial numbers with or without a ''DC'' suffix):

Model	Serial Nos.
(1) S2R	1416R through 5100R.
(2) S2R–R1340	R1340–001 through R1340–035.
(3) S2R–R1820	R1820–001 through R1820–036.
(4) S2R–T11	T11–001 through T11–005.
(5) S2R–T15	T15–001 through T15–044 and T27–001 through T27–044.
(6) S2R–T34	6000 through 6049, T34–001 through T34–279, T36–001 through T36–279, T41–001 through T41–279, and T42–001 through T42–279.
(7) S2RHG–T34	T34HG–101 through T34HG–107.
(8) S2R–T45	T45–001 through T45–015.
(9) S2R–T65	T65–001 through T65–018.
(10) S2RHG–T65	T65–001 through T65–018 and T65HG–011 through T65HG–019.
(11) S2R–G1	G1–101 through G1–115.
(12) S2R–G5	G5–101 through G5–105.
(13) S2R–G6	G6–101 through G6–155.
(14) S2R–G10	G10–101 through G10–168.
(15) S2R–T660	T660–101 through T660–120.

Unsafe Condition

(d) This AD results from reports of cracks in the empennage of Thrush Aircraft, Inc., S2R series airplanes. We are issuing this AD to detect and correct these cracks, which could cause the vertical stabilizer to lose structural integrity. This condition could lead to loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Perform a visual inspection of the vertical stabilizer attach fitting (P/N 40301–7), the horizontal stabilizer attach fitting (P/N 40303–1/–4/–7 or 95267–1), attachment bolt (P/N NAS1105–68), and the vertical fin aft spar (P/N 40261–24 or P/N 95253–1) for corrosion and cracks.	Within the next 50 hours time-in-service (TIS) after January 22, 2008 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 100 hours TIS.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.
(2) If corrosion or cracks are found in P/N 40301–7, 40303–1/–4/–7, 95267–1, NAS1105–68, 40261–24, or 95253–1 during any inspection required in paragraph (e)(1) of this AD: (i) Replace the vertical stabilizer attach fitting with new P/N 95266–3; the horizontal stabilizer attach fitting with new P/N 95267–5; and the attachment bolt with NAS6207–68; and (ii) If corrosion or cracks are found in the P/N 40261–24 or P/N 95253–1 vertical fin aft spar, repair in accordance with Thrush SB–AG–45, Revision B, or replace with a new P/N 40261–24 or new P/N 95253–1.	Before further flight after any inspection where corrosion or cracks are found. This action terminates the repetitive inspections required in paragraph (e)(1) of this AD.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.
(3) If no corrosion or cracks are found in P/N 40301–7, 40303–1/–4/–7, 95267–1, NAS1105–68, 40261–24, or 95253–1 during any inspection required in paragraph (e)(1) of this AD: (i) Replace the vertical stabilizer attach fitting with new P/N 95266–3; the horizontal stabilizer attach fitting with new P/N 95267–5; and the attachment bolt with NAS6207–68; and (ii) Perform a visual inspection of the vertical fin aft spar (P/N 40261–24 or P/N 95253–1) for corrosion and cracks, and. (iii) If corrosion or cracks are found in the P/N 40261–24 or P/N 95253–1 vertical fin aft spar, repair in accordance with Thrush SB–AG–45, Revision B, or replace with a new P/N 40261–24 or new P/N 95253–1.	Within the next 2,000 hours TIS after January 22, 2008 (the effective date of this AD) or within 2 years after January 22, 2008 (the effective date of this AD), whichever occurs first. This action terminates the repetitive inspections required in paragraph (e)(1) of this AD.	Follow Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007.

Special Flight Permit

(f) Under 14 CFR part 39.23, we are limiting the special flight permits authorized for this AD to ferry aircraft to a maintenance facility for inspection by the following conditions:

(1) Hopper must be empty;

(2) Vne reduced to 126 m.p.h. (109 knots); and

(3) No flight into known turbulence.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; *telephone:* (770) 703–6078; *facsimile:* (770) 703–6097; *e-mail: cindy.lorenzen@faa.gov;* or Mike Cann, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6038; *facsimile:* (770) 703–6097; *e-mail: michael.cann@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Thrush Aircraft, Inc. Service Bulletin No. SB–AG–45, Revision B, dated June 1, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Thrush Aircraft, Inc., P.O. Box 3149, 300 Old Pretoria Road, Albany, Georgia 31706–3149; *telephone:* 229–883–1440; *facsimile:* 229–436–4856; or on the Internet at: *http://www.thrushaircraft.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on December 10, 2007.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24218 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21470; Directorate Identifier 2003–NM–45–AD; Amendment 39–15302; AD 2007–25–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) Airplanes; Model DC–10–40 and DC–10–40F Airplanes; and Model MD–11 and MD–11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–11 and MD–11F airplanes. This AD requires, for certain airplanes, modifying the thrust reverser command wiring of the number 2 engine. For certain other airplanes, this AD requires modifying the thrust

reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers. This AD also requires installing thrust reverser locking systems on certain airplanes. This AD results from a determination that the thrust reverser systems on these McDonnell Douglas airplanes do not adequately preclude unwanted deployment of a thrust reverser. We are issuing this AD to prevent an unwanted deployment of a thrust reverser during flight, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective January 22, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 22, 2008.

On October 1, 2001 (66 FR 44950, August 27, 2001), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas Service Bulletin DC10–78–060, dated December 17, 1999.

On April 25, 2001 (66 FR 15785, March 21, 2001), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 01, dated February 18, 1999.

ADDRESSES: For Boeing and McDonnell Douglas service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). For Rohr service information identified in this AD, contact Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–11 and MD–11F airplanes. That supplemental NPRM was published in the **Federal Register** on July 23, 2007 (72 FR 40090). That supplemental NPRM proposed to require, for certain airplanes, modifying the thrust reverser command wiring of the number 2 engine. For certain other airplanes, the supplemental NPRM proposed to require modifying the thrust reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers. The supplemental NPRM also proposed to require installing thrust reverser locking systems on certain airplanes. The supplemental NPRM also proposed to revise the original NPRM by revising, for certain airplanes, the requirements for the modification of the thrust reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers.

Comments

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

Request for Notification of Service Bulletin/Rulemaking

FedEx requests that we and/or Boeing notify operators of any service bulletin or rulemaking that will cover Model MD–11 and MD–11F airplanes that are not specified in Boeing Alert Service Bulletin MD11–78A007, Revision 4, dated February 22, 2007 (which is referred to as a source of service information for doing a modification specified in the supplemental NPRM). FedEx states that it has no comments on the proposed requirements of the supplemental NPRM.

We acknowledge FedEx's request. We have been advised that when a service bulletin is released Boeing does notify the customers affected by the service bulletin. If service information is developed for other Model MD–11 and MD–11F airplanes and an unsafe condition is identified, we might consider further rulemaking. Interested persons can review the **Federal Register** to become aware of such rulemaking actions.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed in the supplemental NPRM.

Costs of Compliance

There are about 612 airplanes of the affected designs in the worldwide fleet. This AD affects about 245 airplanes of U.S. registry. The following tables provide the estimated costs for U.S. operators to comply with this AD, for the applicable actions, at an average hourly labor rate of $80 per work hour.

COST FOR WIRING MODIFICATION/THRUST REVERSER LOCKING SYSTEM INSTALLATION

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modify wiring (Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes).	34	$1,562	$4,282	40	$171,280.
Modify wiring (Model DC–10–40 and DC–10–40F airplanes).	34	$5,238	$7,958	45	$358,110.
Modify wiring (Model MD–11 and –11F airplanes).	Between 124 and 192.	Between $11,912 and $17,672.	Between $21,832 and $33,032.	160	Between $3,493,120 and $5,285,120.

COST FOR WIRING MODIFICATION/THRUST REVERSER LOCKING SYSTEM INSTALLATION—Continued

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Install thrust reverser locking system (Model DC–10–40 and DC–10–40F airplanes).	218	Between $165,535 and $207,792.	Between $182,975 and $225,232.	45	Between $8,233,875 and $10,135,440.

COST OF CONCURRENT ACTIONS FOR MODEL MD–11 AND MD–11F AIRPLANES

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Update program software, as applicable	2	None	$160	Up to 160	Up to $25,600.
Modify wing pylon harnesses, as applicable	100	$5,268	$13,268	Up to 160	Up to $2,122,880.
Modify pylon thrust reverser harnesses and J-box, as applicable.	Between 82 and 192.	Between $10,472 and $15,999.	Between $17,032 and $31,359.	Up to 160	Up to $5,017,440.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–25–20 McDonnell Douglas: Amendment 39–15302. Docket No. FAA–2005–21470; Directorate Identifier 2003–NM–45–AD.

Effective Date

(a) This AD becomes effective January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes, certificated in any category, as listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY

McDonnell Douglas airplane—	As identified in—
(1) Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes.	Boeing Service Bulletin DC10–78–066, Revision 01, dated November 30, 2001.
(2) Model DC–10–40 and DC–10–40F airplanes	Boeing Service Bulletin DC10–78–067, dated October 30, 2002.
(3) Model MD–11 and MD–11F airplanes	Boeing Alert Service Bulletin MD11–78A007, Revision 4, dated February 22, 2007.

Unsafe Condition

(d) This AD was prompted by a determination that the thrust reverser systems on these McDonnell Douglas airplanes do not adequately preclude unwanted deployment of a thrust reverser. We are issuing this AD to prevent an unwanted deployment of a thrust reverser during flight, which could result in reduced controllability of the airplane.

Compliance

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

Wiring Modification

(f) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, and DC–10–30F (KC–10A and KDC–10) airplanes: Within 60 months after the effective date of this AD, modify the thrust reverser command wiring of the number 2 engine by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC10–78–066, Revision 01, dated November 30, 2001.

(g) For Model MD–11 and MD–11F airplanes: Within 60 months after the effective date of this AD, modify the thrust reverser system wiring from the flight compartment to engines 1, 2, and 3 thrust reversers by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–78A007, Revision 4, dated February 22, 2007.

Wiring Modification/Installation of Thrust Reverser Locking System

(h) For Model DC–10–40 and DC–10–40F airplanes: Within 60 months after the effective date of this AD, modify the thrust reverser command wiring of the number 2 engine by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC10–78–067, dated October 30, 2002, and install thrust reverser locking systems by doing all the applicable actions specified in the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC10–78–064, dated June 24, 2003.

Prior or Concurrent Actions

(i) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, and DC–10–30F (KC–10A and KDC–10) airplanes: Prior to or concurrently with the actions required by paragraph (f) of this AD, do the actions specified in Table 2 of this AD.

TABLE 2.—PRIOR OR CONCURRENT ACTIONS FOR MODEL DC–10–10, DC–10–10F, DC–10–15, DC–10–30, AND DC–10–30F (KC–10A AND KDC–10) AIRPLANES

Do—	Required by—	In accordance with—
Repetitive detailed visual inspections, functional checks, and torque checks of the thrust reverser systems, and applicable corrective actions.	Paragraphs (c) and (i) of AD 2001–05–10, amendment 39–12147.	McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 01, dated February 18, 1999.
A modification of the indication light system for the thrust reversers.	Paragraph (a) of AD 2001–17–19, amendment 39–12410.	McDonnell Douglas Service Bulletin DC10–78–060, dated December 17, 1999; or McDonnell Douglas Service Bulletin DC10–78–060, Revision 01, dated June 30, 2003.

(j) For Model MD–11 and MD–11F airplanes: Prior to or concurrently with the actions required by paragraph (g) of this AD, do the actions specified in Table 3 of this AD.

TABLE 3.—PRIOR OR CONCURRENT ACTIONS FOR MODEL MD–11 AND MD–11F AIRPLANES

Do—	In accordance with—
An update of the program software of display electronic units	McDonnell Douglas Service Bulletin MD11–31–091, dated November 5, 1998.
A modification of the wing pylon harnesses	Rohr Service Bulletin MD–11 54–200, Revision 1, dated May 14, 2001.
A modification of the pylon thrust reverser harnesses and J-box	Rohr Service Bulletin MD–11 54–201, Revision 2, dated December 12, 2005.

Actions Accomplished According to Previous Issues of Service Bulletins

(k) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin DC10–78–066, dated March 6, 2001; Rohr Service Bulletin MD–11 54–201, dated November 30, 1999; or Rohr Service Bulletin MD–11 54–201, Revision 1, dated November 23, 2005; are considered acceptable for compliance with the applicable corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(m) You must use the service bulletins listed in Table 4 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 4.—ALL MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin MD11–78A007	4	February 22, 2007.
Boeing Service Bulletin DC10–78–066	01	November 30, 2001.
Boeing Service Bulletin DC10–78–067	Original	October 30, 2002.
McDonnell Douglas Alert Service Bulletin DC10–78A057, including Attachment A	01	February 18, 1999.
McDonnell Douglas Service Bulletin DC10–78–060	Original	December 17, 1999.
McDonnell Douglas Service Bulletin DC10–78–060	01	June 30, 2003.
McDonnell Douglas Service Bulletin DC10–78–064	Original	June 24, 2003.
McDonnell Douglas Service Bulletin MD11–31–091	Original	November 5, 1998.
Rohr Service Bulletin MD–11 54–200	1	May 14, 2001.

TABLE 4.—ALL MATERIAL INCORPORATED BY REFERENCE—Continued

Service Bulletin	Revision level	Date
Rohr Service Bulletin MD–11 54–201	2	December 12, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of the service bulletins listed in Table 5 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 5.—NEW MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin MD11–78A007	4	February 22, 2007.
Boeing Service Bulletin DC10–78–066	01	November 30, 2001.
Boeing Service Bulletin DC10–78–067	Original	October 30, 2002.
McDonnell Douglas Service Bulletin DC10–78–060	01	June 30, 2003.
McDonnell Douglas Service Bulletin DC10–78–064	Original	June 24, 2003.
McDonnell Douglas Service Bulletin MD11–31–091	Original	November 5, 1998.
Rohr Service Bulletin MD–11 54–200	1	May 14, 2001.
Rohr Service Bulletin MD–11 54–201	2	December 12, 2005.

(2) On October 1, 2001 (66 FR 44950, August 27, 2001), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas Service Bulletin DC10–78–060, dated December 17, 1999.

(3) On April 25, 2001 (66 FR 15785, March 21, 2001), the Director of the Federal Register approved the incorporation by reference of McDonnell Douglas Alert Service Bulletin DC10–78A057, Revision 01, including Attachment A, dated February 18, 1999.

(4) Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of Boeing and McDonnell Douglas service information. Contact Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098, for a copy of Rohr service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on November 29, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–23934 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0336; Directorate Identifier 2007–NM–201–AD; Amendment 39–15308; AD 2007–26–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, 747–300, and 747–400 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–200B, 747–300, and 747–400 series airplanes. This AD requires an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service units of the outboard and center main deck, the flight attendant service units, flightcrew rest, upper and lower module of the door 5 overhead crew rest, lavatory modules, and miscellaneous ceiling panels, as applicable, and related investigative/corrective actions if necessary. This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

DATES: This AD becomes effective January 2, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 2, 2008.

We must receive comments on this AD by February 15, 2008.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory

evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Susan Letcher, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6474; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report indicating that several passenger masks with broken in-line flow indicators were found following a mask deployment on a Boeing Model 777–200 series airplane. Operators subsequently found several more broken in-line flow indicators after examining the oxygen mask assemblies on other Model 777 series airplanes and on Model 747–400 series airplanes. Investigation revealed that certain flow indicators are weaker and can fracture because of internal residual stresses caused by the flow indicator joint design and manufacturing processes. Fractures cause the in-line flow indicator to separate and consequently prevent oxygen flow to the mask during an emergency. This condition, if not corrected, could result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

The oxygen masks on certain Model 777 airplanes and Model 747–400 series airplanes have the same flow indicators as those installed on certain Model 747–200B and –300 series airplanes. Therefore, the Model 747–200B and –300 series airplanes are also subject to the identified unsafe condition. We are addressing the unsafe condition on the Model 777 airplanes in another rulemaking action.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–35–2119, dated November 30, 2006. The service bulletin describes procedures for doing a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in each of the oxygen boxes in the passenger service units of the outboard and center main deck, the flight attendant service units, flightcrew rest, upper and lower module of the door 5 overhead crew rest, lavatory modules, and miscellaneous ceiling panels, as applicable. The service bulletin also describes procedures for doing related investigative and corrective actions. The related investigative action includes doing a general visual inspection of each flow indicator to determine the color of the flow direction mark and the word ''flow'' on the flow indicator, if the identification (ID) label shows that the manufacturer is B/E Aerospace and the manufacture date is from January 1, 2002, through March 1, 2006. The corrective action includes replacing the oxygen mask assembly with a new oxygen mask assembly having an improved flow indicator, if the flow direction mark and the word ''flow'' on the flow indicator of the existing oxygen mask are not green and the letter ''W'' is shown on the right side of the ID label.

Boeing Service Bulletin 747–35–2119 refers to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for replacing an oxygen mask assembly with a new oxygen mask assembly having an improved flow indicator. B/E Aerospace Service Bulletin 174080–35–01 describes procedures for modifying the oxygen mask assembly by replacing the flow indicator, part number (P/N) 118023–02, with an improved flow indicator, P/N 118023–12. B/E Aerospace Service Bulletin 174080–35–01 also specifies that, as an alternative to modifying the oxygen mask, operators may replace the oxygen mask with a new oxygen mask having the improved flow indicator.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. Therefore, we are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event. This AD requires accomplishing the actions specified in the service information described previously.

Clarification Between the AD and Service Bulletin

Although Boeing Service Bulletin 747–35–2119 specifies to replace the oxygen mask assembly with a new oxygen mask assembly having an improved flow indicator, the intent of the service bulletin is to replace it with either a new or modified oxygen mask assembly having an improved flow indicator. Therefore, this proposed AD would require replacing the oxygen mask assembly with a new or modified oxygen mask assembly having an improved flow indicator.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 141 work hours per airplane, assuming an average of 600 oxygen masks per airplane distributed in about 150 oxygen boxes, at an average labor rate of $80 per work hour. Required parts would cost about $6 per oxygen mask, or $3,600 per airplane. Based on these figures, the estimated cost of the AD would be up to $14,880 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0336; Directorate Identifier 2007–NM–201–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–06 Boeing: Amendment 39–15308. Docket No. FAA–2007–0336; Directorate Identifier 2007–NM–201–AD.

Effective Date

(a) This AD becomes effective January 2, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200B, 747–300, and 747–400 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–35–2119, dated November 30, 2006.

Unsafe Condition

(d) This AD results from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We are issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

Compliance

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

Inspection and Related Investigative/ Corrective Actions if Necessary

(f) Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in each of the oxygen boxes in the passenger service units of the outboard and center main deck, the flight attendant service units, flightcrew rest, upper and lower module of the door 5 overhead crew rest, lavatory modules, and miscellaneous ceiling panels, as applicable, and do all the applicable related investigative and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–35–2119, dated November 30, 2006; except where the service bulletin specifies replacing the oxygen mask assembly with a new oxygen mask assembly, replace it with a new or modified oxygen mask assembly having an improved flow indicator. The related investigative and corrective actions must be done before further flight.

Note 1: The service bulletin refers to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; and Revision 1, dated May 1, 2006; as additional sources of service information for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin 747–35–2119, dated November 30, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24334 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28854; Directorate Identifier 2007–NM–109–AD; Amendment 39–15307; AD 2007–26–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –200LR, –300, and –300ER Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all

Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. This AD requires doing initial and repetitive inspections for cracking of the elevator actuator fittings, and replacing any cracked fitting with a new fitting. This AD results from a report that a cracked left elevator actuator fitting was found on a Model 777 airplane. We are issuing this AD to detect and correct a cracked actuator fitting, which could detach from the elevator and lead to an unrestrained elevator and an unacceptable flutter condition, which could result in loss of airplane control.

DATES: This AD becomes effective January 22, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 22, 2008.

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. That NPRM was published in the **Federal Register** on August 2, 2007 (72 FR 42326). That NPRM proposed to require doing initial and repetitive inspections for cracking of the elevator actuator fittings, and replacing any cracked fitting with a new fitting.

Comments

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

Request To Revise Incorrect Wording

Two commenters, Boeing and Continental Airlines, request that we revise an incorrect word in the NPRM. The commenters state that, under the Relevant Service Information section of the NPRM, the third bulleted item, which reads, in part, ''before the accumulation of 10,000 total flight cycles or within 12 months after the date on the service bulletin, whichever occurs first,'' should actually read ''* * * whichever occurs later.'' The commenters request that we make this change so the NPRM will conform to the actual compliance time specified by Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007, which is cited as the appropriate source of service information for accomplishing the proposed requirements of the NPRM.

We partially agree with this request. We agree that the specified word ''first'' should be ''later,'' to conform to the service bulletin. However, the Relevant Service Information section of the NPRM is not carried forward in the final rule; therefore, it is not necessary to change the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 619 airplanes of the affected design in the worldwide fleet. This AD affects about 138 airplanes of U.S. registry. The required inspections take about 4 work hours per airplane, per inspection cycle, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $44,160, or $320 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–05 Boeing: Amendment 39–15307. Docket No. FAA–2007–28854; Directorate Identifier 2007–NM–109–AD.

Effective Date

(a) This AD becomes effective January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that a cracked left elevator actuator fitting was found on a Model 777 airplane. We are issuing this AD to detect and correct a cracked actuator fitting, which could detach from the elevator and lead to an unrestrained elevator and an unacceptable flutter condition, which could result in loss of airplane control.

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.

Inspections

(f) At the applicable time specified in paragraph 1.E. ''Compliance'' of Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007, do an initial dye penetrant or high-frequency eddy current (HFEC) inspection for cracking of the elevator actuator fittings, and, thereafter, do repetitive dye penetrant, HFEC, or detailed inspections at the applicable times specified in paragraph 1.E. ''Compliance.'' Before further flight, replace any fitting found to be cracked during any inspection required by this AD with a new fitting having the same part number, or an optional part number as identified in the service bulletin. Thereafter, do initial and repetitive inspections of the replacement fitting as described in paragraph 1.E. of the service bulletin. Do all inspections and actions described in this paragraph in accordance with the Accomplishment Instructions of the service bulletin; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 777–55A0015, dated April 19, 2007, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24338 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28990; Directorate Identifier 2007–NM–033–AD; Amendment 39–15304; AD 2007–26–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –300 series airplanes. This AD requires repetitive detailed inspections with a borescope for cracks of the intercostal tee clips; or repetitive detailed inspections for cracks of the intercostal tee clips and attachment fasteners at the number 3 and number 4 doorstops of the passenger door cutouts; and related investigative and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports of cracked intercostal tee clips at the number 3 and number 4 doorstops of the passenger door cutouts. We are issuing this AD to detect and correct cracking of the tee clips, which could result in additional stress on the adjacent tee clips, surrounding intercostals, edge frame, door structure and doorstops. This additional stress could cause further cracking or breaking of the tee clips, which could result in failure of the door to seal and consequent rapid decompression of the airplane.

DATES: This AD is effective January 22, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 22, 2008.

We must receive comments on this AD by January 22, 2008.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 757–200, –200CB, and –300 series airplanes. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45961). That NPRM proposed to require repetitive inspections for cracks of the intercostal tee clips and attachment fasteners at the number 3 and number 4 doorstops of the passenger door cutouts, or repetitive inspections for cracks of the intercostal tee clips; and related investigative/corrective actions if necessary. That NPRM also provides an optional

terminating action for the repetitive inspections.

Comments

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

Support for the NPRM

Continental Airlines (CAL) supports the NPRM and notes that it has an on-going customized passenger door maintenance program already in place to inspect the subject area on its airplanes at 4C and 8C heavy checks. CAL adds that it has found no cracks on its airplanes, but intends to incorporate the terminating action provided in the NPRM at the next 4C or 8C opportunity.

Request To Include Access and Close-up Costs

Boeing asks that the costs to gain and close access for the proposed detailed inspection be included to better reflect the cost difference between the two inspection options provided in the NPRM (detailed versus borescope). Boeing estimates 9.5 work hours to gain access by removing existing galleys, and Boeing estimates another 10 work hours to replace the galleys after inspection to close access. Boeing states that this adds a total of 19.5 hours of work at a cost of $1,560 per airplane based on an average labor rate of $80 per work hour. This adds up to an additional cost to the fleet of $505,440 over the $51,840 cost that is shown. This access cost is not incurred if the alternative borescope inspection method is used; however, if repairs are to be performed, either to address cracking or to terminate inspections, the access and close-out costs would be incurred in addition to parts costs in order to perform the required part replacements. Boeing adds that this would affect the supplementary information in the estimated Costs of Compliance paragraph.

We acknowledge Boeing's concerns. However, because operators are given the option of doing the detailed inspection or the detailed inspection with a borescope (which takes longer), the cost depends on which inspection is done. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, or the costs of ''on-condition'' actions such as repairs (that is, actions needed to correct an unsafe condition). We have made no change to the AD in this regard.

Clarification of Summary Language

We revised the Summary section of this final rule to specify the repetitive inspection methods.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Difference Between the Proposed AD and Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 912 airplanes of the affected design in the worldwide fleet. This AD affects about 324 airplanes of U.S. registry.

The detailed inspection, if accomplished, takes about 2 work hours per airplane, at an average work rate of $80 per work hour. Based on these figures, the estimated cost of the detailed inspections required by this AD is $51,840, or $160 per airplane, per inspection cycle.

The borescope inspection, if accomplished, takes about 3 work hours per airplane, at an average work rate of $80 per work hour. Based on these figures, the estimated cost of the borescope inspections required by this AD is $77,760, or $240 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–02 Boeing: Amendment 39–15304. Docket No. FAA–2007–28990; Directorate Identifier 2007–NM–033–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, and –300 series airplanes, certificated in any category; as identified in

Boeing Alert Service Bulletin 757–53A0093, dated November 8, 2006.

Unsafe Condition

(d) This AD results from reports of cracked intercostal tee clips at the number 3 and number 4 doorstops of the passenger door cutouts. We are issuing this AD to detect and correct cracking of the tee clips, which could result in additional stress on the adjacent tee clips, surrounding intercostals, edge frame, door structure and doorstops. This additional stress could cause further cracking or breaking of the tee clips, which could result in failure of the door to seal and consequent rapid decompression of the airplane.

Compliance

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

Repetitive Inspections/Investigative and Corrective Actions

(f) Before the accumulation of 20,000 total flight cycles or within 3,000 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspection specified in paragraph (f)(1) or (f)(2) of this AD by doing all the actions including all applicable related investigative (additional detailed inspections if necessary) and corrective actions; except as provided by paragraph (g) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0093, dated November 8, 2006. All related investigative and corrective actions must be done before further flight.

(1) Do a detailed inspection for cracks of the intercostal tee clips and attachment fasteners at the number 3 and number 4 doorstops of the passenger door cutouts. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until accomplishment of the terminating action specified in paragraph (h) of this AD.

(2) Do a detailed inspection with a borescope for cracks of the intercostal tee clips. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until accomplishment of the terminating action specified in paragraph (h) of this AD.

(g) If any cracked structure is found during any inspection required by this AD, and the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0093, dated November 8, 2006, specify to contact Boeing for appropriate action: Before further flight, repair any cracked structure using a method approved in accordance with the procedures specified in paragraph (i)(2) of this AD.

Optional Terminating Action

(h) Replacing both intercostal tee clips on the left and right sides with new tee clips in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0093, dated November 8, 2006, terminates the repetitive inspections required by this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 757–53A0093, dated November 8, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24337 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28942; Directorate Identifier 2007–NM–093–AD; Amendment 39–15306; AD 2007–26–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive detailed and high-frequency eddy current inspections for cracking around the heads of the fasteners on the forward fastener row of certain areas of the station (STA) 259.5 circumferential butt splice, and repair if necessary. This AD also requires a preventive modification, which eliminates the need for the repetitive inspections. This AD results from a report that an operator found multiple cracks in the fuselage skin of a Model 737–200 airplane, at the forward fastener row of the STA 259.5 circumferential butt splice between stringers 19 and 24. We are issuing this AD to prevent cracking of the STA 259.5 circumferential butt splice, which could result in loss of structural integrity of the fuselage skin and possible loss of cabin pressure.

DATES: This AD is effective January 22, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 22, 2008.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness

directive (AD) that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45949). That NPRM proposed to require repetitive detailed and high-frequency eddy current inspections for cracking around the heads of the fasteners on the forward fastener row of certain areas of the station (STA) 259.5 circumferential butt splice, and repair if necessary. That NPRM also proposed to require a preventive modification, which would eliminate the need for the repetitive inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Boeing supports the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 2,150 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $80 per work hour. Required parts will be supplied by the operator.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	5	$400, per inspection cycle	654	$261,600, per inspection cycle.
Preventive modification	24	$1,920	654	$1,255,680.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–04 Boeing: Amendment 39–15306. Docket No. FAA–2007–28942; Directorate Identifier 2007–NM–093–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 22, 2008.

Affected ADs

(b) Accomplishing repairs and modifications described in paragraphs (f) and (g) of this AD is considered acceptable for compliance with repair requirements of paragraphs (f) and (g) of AD 92–25–09, amendment 39–8424, for the areas of the station (STA) 259.5 circumferential butt splice only.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006.

Unsafe Condition

(d) This AD results from a report that an operator found multiple cracks in the fuselage skin of a Model 737–200 airplane, at the forward fastener row of the STA 259.5 circumferential butt splice between stringers 19 and 24. We are issuing this AD to prevent cracking of the STA 259.5 circumferential butt splice, which could result in loss of structural integrity of the fuselage skin and possible loss of cabin pressure.

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.

Inspections

(f) At the applicable initial compliance time specified in paragraph 1.E. ''Compliance'' of Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006, except as provided by paragraph (j) of this AD: Do detailed and high-frequency eddy current inspections for cracking around the heads of the fasteners on the forward fastener row of certain areas of the STA 259.5 circumferential butt splice, by doing all of the actions specified in Part 1 of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (i) of this AD. Repeat the inspections thereafter at the intervals specified in paragraph 1.E. of the service bulletin. Doing the preventive modification specified in paragraph (h) of this AD terminates the repetitive inspection requirements of this paragraph.

Repair

(g) If any crack is found during any inspection required by this AD, before further flight, repair in accordance with Part 1 of the Accomplishment Instructions of Boeing

Special Attention Service Bulletin 737–53–1267, dated November 28, 2006.

Preventive Modification

(h) At the compliance time specified in paragraph 1.E. of Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006, except as provided by paragraph (j) of this AD: Do the preventive modification in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006. Doing the preventive modification terminates the repetitive inspections required by paragraph (f) of this AD.

Modification or Repair Done in Accordance With AD 92–25–09

(i) Inspections described in paragraph (f) of this AD are not required for areas of the STA 259.5 circumferential butt splice that have been modified in accordance with the service information specified in Table 1 of this AD. (Boeing Service Bulletin 737–53–1076, Revision 2, dated February 8, 1990; and Revision 4, dated September 26, 1991; are cited as appropriate sources of service information for doing certain requirements of AD 92–25–09.)

TABLE 1.—SERVICE INFORMATION

Boeing Service Bulletin—	Revision level—	Date—
737–53–1076	4	September 26, 1991.
737–53–1076	3	September 20, 1990.
737–53–1076	2	February 8, 1990.
737–53–1076	1	November 23, 1988.
737–53–1076	Original	October 30, 1986.

Compliance Times

(j) Where Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006, specifies compliance times relative to the release date of the service bulletin, this AD requires compliance at compliance times relative to the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 737–53–1267, dated November 28, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24335 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28924; Directorate Identifier 2007–NM–051–AD; Amendment 39–15305; AD 2007–26–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–200C and –200F series airplanes. This AD requires, among other actions, installing mounting brackets, support angles, and moisture curtains in the main equipment center. This AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are issuing this AD to prevent water contamination of the electrical/electronic units, which could cause the electrical/electronic units to malfunction, and as a consequence, could adversely affect the airplane's continued safe flight.

DATES: This AD becomes effective January 22, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 22, 2008.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would

apply to certain Boeing Model 747–200C and –200F series airplanes. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45954). That NPRM proposed to require, among other actions, installing mounting brackets, support angles, and moisture curtains in the main equipment center.

Comments

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

Request To Refer to Earlier Revision of a Referenced Service Bulletin

Boeing requests that paragraph (g) of the NPRM be revised to include Boeing Alert Service Bulletin 747–38A2073, Revision 1, dated June 21, 1990; and Revision 2, dated April 26, 2001; as additional sources of service information for accomplishing the prior or concurrent requirements. Boeing states that this will align the NPRM with Boeing Alert Service Bulletin 747–38A2073, Revision 3, dated May 22, 2003 (referred to in the NPRM as an appropriate source of service information for accomplishing the prior or concurrent requirements).

We partially agree. We agree with Boeing that accomplishing the actions specified in Revisions 1 and 2 of Boeing Alert Service Bulletin 747–38A2073 is acceptable for compliance with the corresponding actions required by paragraph (g) of this AD. However, we do not agree that a change to the final rule is necessary. As mentioned in the Relevant Service Information section of the NPRM, AD 2001–24–30, amendment 39–12547 (66 FR 64104, December 12, 2001), requires installing drip shields in accordance with Boeing Alert Service Bulletin 747–38A–2073, Revision 2; or in accordance with Revision 1 or Original Release, dated November 30, 1989, if done before the effective date of that AD. In addition, paragraph (h) of this AD states, ''Installation of drip shields before the effective date of this AD in accordance with paragraph (a) and Note 2 of AD 2001–24–30, amendment 39–12547, is acceptable for compliance with the corresponding actions in paragraph (g) of this AD.'' We have made no change to the final rule in this regard.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing another modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Costs of Compliance

There are about 79 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation	3	$80	$8,960	$9,200	25	$230,000
Prior or concurrent requirements of AD 2001–24–30	32	80	4,497	7,057	25	176,425

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–26–03 Boeing: Amendment 39–15305. Docket No. FAA–2007–28924; Directorate Identifier 2007–NM–051–AD.

Effective Date

(a) This AD becomes effective January 22, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200C and –200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007.

Unsafe Condition

(d) This AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are issuing this AD to prevent water contamination of the electrical/electronic units, which could cause the electrical/electronic units to malfunction, and as a consequence, could adversely affect the airplane's continued safe flight.

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.

Installations

(f) Within 24 months after the effective date of this AD, install mounting brackets, support angles, and moisture curtains in the main equipment center, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007.

Prior or Concurrent Requirements

(g) For airplanes identified as Group 1 and Group 3 airplanes in Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007: Prior to or concurrently with the requirements of paragraph (f) of this AD, install drip shields (including a drip pan assembly, drain tubing, and attaching hardware) over the forward, outboard halves of the E1–1 and E3–1 shelves in the main equipment bay, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–38A2073, Revision 3, dated May 22, 2003.

(h) Installation of drip shields before the effective date of this AD in accordance with paragraph (a) and Note 2 of AD 2001–24–30, amendment 39–12547, is acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(j) You must use the service bulletins identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin 747–25A3430	Original	February 15, 2007.
Boeing Alert Service Bulletin 747–38A2073	3	May 22, 2003.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24340 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 07 0301041–7802–03]

RIN 0691–AA63

Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations concerning the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The BE–11 survey is conducted annually and is a sample survey that obtains financial and operating data covering the overall operations of U.S. parent companies and their foreign affiliates. BEA is expanding the reporting requirements on the BE–11 annual survey so that U.S. parent companies that are banks, foreign affiliates of bank parents, and bank foreign affiliates of nonbank parents are reportable. A few minor changes are required to the instructions on Form BE–11A, Report for U.S. Reporter, so it can be used to collect bank as well as nonbank data. BEA is implementing a new, specialized Form BE–11B(FN) for foreign affiliates of bank parents and bank foreign affiliates of nonbank parents.

DATES: This final rule will be effective January 16, 2008.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835 or e-mail (*david.galler@bea.gov*).

SUPPLEMENTARY INFORMATION: In the September 13, 2007, **Federal Register**, 72 FR 52316–52319, BEA published a notice of proposed rulemaking setting forth revised reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change. This final rule amends 15 CFR Part 806.14 to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad.

Description of Changes

The BE–11 survey is a mandatory survey and is conducted annually by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

This final rule expands the reporting requirements on the BE–11 annual survey so that U.S. parent companies that are banks and their foreign affiliates and bank foreign affiliates of nonbank U.S. parent companies will now be reportable. Until now, collection of data on the BE–11 annual survey has been limited to that of nonbank U.S. parent companies and their nonbank foreign affiliates. Data for bank U.S. parent companies and their bank and nonbank foreign affiliates and data for bank

affiliates of nonbank U.S. parent companies have been collected only once every five years on BEA's BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

To collect data for a U.S. Reporter that is a bank, BEA will use the BE–11A, Report for U.S. Reporter, that is used for nonbank U.S. parents. BEA will use a new, specialized form, Form BE–11B(FN), for collecting data for foreign affiliates of bank U.S. parents and bank affiliates of nonbank U.S. parents. The items to be collected on this form include most of those collected on the form used for bank affiliates on the BE–10 benchmark survey and a few additional items, including sales of services by destination and employment by broad occupational structure, that will make the data more useful for studies of offshoring and more comparable with the data collected for nonbank affiliates of nonbank parents. Because affiliates of bank parents and bank affiliates of nonbank parents tend to be quite large, BEA set the exemption level for reporting on Form BE–11B(FN) at $250 million. Foreign affiliates of bank U.S. parents and bank affiliates of nonbank U.S. parents with total assets, sales or gross operating revenues, and net income of $250 million or less (positive or negative) will not be required to be reported on the annual survey. Instructions on the forms and in the instruction booklet will be modified to include banks.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, conducts the BE–11 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international financial flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA. The annual survey of U.S. direct investment abroad is a sample survey that collects information on a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

The collection of information in this final rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

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

The BE–11 survey is expected to result in the filing of reports from approximately 1,550 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 79.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 122,900 hours (1,550 respondents times 79.3 hours average burden). This estimate is slightly above the burden of 117,600 hours currently requested for this survey in the OMB inventory.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; FAX: 202–606–5311; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0053, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by FAX at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 806

U.S. investment abroad, Multinational corporations, Economic statistics, Penalties, Reporting and recordkeeping requirements.

Dated: November 29, 2007.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

■ 1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173) and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

■ 2. Section 806.14(f)(3) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) BE–11—Annual survey of U.S. Direct Investment Abroad: A report, consisting of Form BE–11A and Form(s) BE–11B(LF)(Long Form), BE–11B(SF)(Short Form), BE–11B(FN), BE–

11B(EZ), and/or BE–11C, is required of each U.S. Reporter that, at the end of the Reporter's fiscal year, had a foreign affiliate reportable on Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each U.S. person having a foreign affiliate reportable on Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C. If the U.S. Reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, the bank, including all of its domestic subsidiaries or units, must file on a separate Form BE–11A. The nonbanking U.S. operations not owned by the bank must also file on a Form BE–11A.

(A) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(B) If for a U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 31 and Part IV. It must also file a Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE–11B(LF), (SF), and (EZ) (Report for Majority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter).

(A) A BE–11B(LF)(Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $150 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(B) A BE–11B(SF)(Short Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative), but for which no one of these items was greater than $150 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(C) A BE–11B(EZ) must be filed for each nonbank foreign affiliate of a nonbank U.S. Reporter that is selected to be reported on this form in lieu of Form BE–11B(LF) or Form BE–11B(SF).

(iii) Form BE–11B(FN) (Report for Foreign Affiliate of Bank U.S. Reporter and Bank Affiliate of Nonbank U.S. Reporter) must be filed for 1) each foreign affiliate (bank and nonbank) of a bank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $250 million (positive or negative) at the end of, or for, the affiliate's fiscal year and 2) each bank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $250 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Form BE–11C (Report for Minority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter) must be filed for each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2007 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one nonbank U.S. Reporter, but less than 20 percent by all nonbank U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(v) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) For nonbank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $40 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $40 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

(B) For affiliates of bank U.S. Reporters and bank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $250 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $250 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

(C) For nonbank foreign affiliates of nonbank U.S. Reporters, for fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(D) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(vi) Notwithstanding paragraph (f)(3)(v) of this section, a Form BE–11B(LF), (SF), (FN), (EZ) or BE–11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AB10

Premium Rates; Payment of Premiums; Flat Premium Rates, Variable-Rate Premium Cap, and Termination Premium; Deficit Reduction Act of 2005; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to amend PBGC's regulations on Premium Rates and Payment of Premiums to implement certain provisions of the Deficit Reduction Act of 2005 (Pub. L. 109–171) and the Pension Protection Act of 2006 (Pub. L. 109–280) that are effective beginning in 2006 or 2007. The

provisions implemented by this rule change the flat premium rate, cap the variable-rate premium in some cases, and create a new ''termination premium'' that is payable in connection with certain distress and involuntary plan terminations. This rule does not address other provisions of the Pension Protection Act of 2006 that deal with PBGC premiums.

DATES: Effective January 16, 2008.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates, and section 4007 of ERISA deals with the payment of premiums, including premium due dates, interest and penalties on premiums not timely paid, and persons liable for premiums.

On February 8, 2006, the President signed into law the Deficit Reduction Act of 2005, Pub. L. 109–171 (DRA 2005). Section 8101 of DRA 2005 amends section 4006 of ERISA. Section 8101(a) changes the per-participant flat premium rate for plan years beginning in 2006 from $19 to $30 for single-employer plans and from $2.60 to $8 for multiemployer plans and provides for inflation adjustments to the flat rates for future years. Section 8101(b) creates a new ''termination premium'' (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations that occur after 2005.

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Public Law 109–280 (PPA 2006). Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005. Section 405 of PPA 2006 amends section 4006 of ERISA to cap the variable-rate premium for plans of certain small employers beginning in 2007. (PPA 2006 also makes other changes affecting PBGC premiums that are not addressed in this rule.)

On February 20, 2007, PBGC published (at 72 FR 7755) a proposed rule to amend PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) to conform to these requirements of DRA 2005 and PPA 2006 and to clarify how the requirements apply. PBGC received one public comment on the proposed rule. The comment focused on the termination premium and is discussed below.

Flat-Rate Premium

Until the enactment of DRA 2005, the flat-rate premium had remained unchanged for single-employer plans since 1991 and for multiemployer plans since 1989. Section 8101(a) of DRA 2005 amends section 4006(a)(3)(A) of ERISA and adds new subparagraphs (F) and (G) to the end of section 4006(a)(3) of ERISA to raise the flat premium rates for 2006 for both single- and multiemployer plans and to provide for inflation indexing for future years.

Applicability

Before amendment by DRA 2005, section 4006(a)(3)(A) of ERISA provided (in part) that ''* * * the annual premium rate * * * is * * * in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the [per-participant variable-rate premium] under subparagraph (E) for each * * * participant * * *.'' Section 8101(a)(1)(A) of DRA 2005 changes ''$19'' to read ''$30.'' Thus, the amended text of ERISA, read literally, makes it appear that the $30 single-employer flat-rate premium applies to plan years beginning after 1990. However, section 8101(d)(1) of DRA 2005 (which does not amend ERISA) says that this change applies to plan years beginning after December 31, 2005. Accordingly, PBGC considers single-employer flat premium rates for plan years beginning before 2006 to be unaffected by DRA 2005.

Participant Count

Section 8101(a)(2)(A)(ii) of DRA 2005 adds a new clause (iv) to section 4006(a)(3)(A) of ERISA providing that the flat premium rate for a multiemployer plan for a post-2005 plan year is ''$8.00 for each individual who is a participant in such plan during the applicable plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(A)(i) of ERISA.

Flat Premium Rates

This rule amends § 4006.3 of the premium rates regulation to reflect the changes to the flat-rate premium made by section 8101(a) of DRA 2005. Existing paragraphs (a)(1) and (a)(2) of § 4006.3 (setting forth the $19 and $2.60 flat rates) are removed, and a cross-reference to new § 4006.3(c) is provided instead. Paragraph (1) of new § 4006.3(c) provides pre-2006 rates ($19 and $2.60); paragraph (2) provides 2006 rates ($30 and $8); and paragraph (3) provides post-2006 rates (the greater of the preceding year's rate or the inflation-adjusted rate).

Inflation Adjustments

Section 8101(a)(1)(B) and (2)(B) of DRA 2005 add to section 4006(a)(3) of ERISA substantially identical new subparagraphs (F) and (G) providing for inflation adjustments to the $30 and $8 flat rates for plan years beginning after 2006. The adjustments are based on changes in the national average wage index as defined in section 209(k)(1) of the Social Security Act, with a two-year lag—for example, for 2007, it will be the 2005 index that will be compared to the baseline (the 2004 index). However, new subparagraphs (F) and (G) are written in such a way that the premium rate can never go down; if the change in the national average wage index is negative, the premium rate remains the same as in the preceding year. Also, under new subparagraphs (F) and (G), premium rates are rounded to the nearest whole dollar. PBGC interprets this to mean that if the adjustment formula would produce an unrounded premium rate of some number of dollars plus 50 cents, the premium rate will be rounded up. The inflation adjustment is described in new § 4006.3(d).

Variable-Rate Premium

Section 405 of PPA 2006 amends section 4006(a)(3)(E)(i) of ERISA and adds new subparagraph (H) to the end of section 4006(a)(3) to cap the variable-rate premium for certain plans, effective for plan years beginning after 2006. This rule revises § 4006.3(b) of the premium rates regulation to reflect the new cap.

Plans Covered

Clause (i) of new section 4006(a)(3)(H) of ERISA says that the new variable-rate premium cap applies ''[i]n the case of an employer who has 25 or fewer

employees on the first day of the plan year.'' But clause (ii) of new section 4006(a)(3)(H) of ERISA makes clear that the applicability of the new cap does not necessarily depend on the size of a single employer, but rather depends on the size of a plan's controlled group, that is, the aggregate size of ''all contributing sponsors and their controlled groups.'' (See the definition of ''controlled group'' in § 4001.2 of PBGC's regulation on Terminology (29 CFR Part 4001), which provides that ''[a]ny reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group''). Since a plan maintained by one contributing sponsor may or may not also be maintained by one or more other contributing sponsors that are not in the first sponsor's controlled group, the applicability of the cap must be determined plan by plan, not employer by employer. New § 4006.3(b)(3) describes the plans eligible for the cap.

Meaning of ''Employee''

New section 4006(a)(3)(H) of ERISA does not give guidance as to the meaning of the term ''employee.'' New § 4006.3(b)(4) as added by this rule defines ''employee'' for this purpose by reference to section 410(b)(1) of the Internal Revenue Code, which deals with minimum coverage requirements for qualified plans and requires that employees be counted to evaluate the breadth of coverage of a plan. For this purpose, certain individuals may be counted as ''employees'' although they might not be considered common law employees of the employer—for example, affiliated service group employees (under Code section 414(m)) and leased employees (under Code section 414(n)). PBGC considers this approach appropriate to prevent an employer from qualifying for the cap by artificially lowering its employee count through the use of sophisticated business structuring devices. In addition, in order to ensure that all employees are counted, new § 4006.3(b)(4) provides that the employee count is to be determined without regard to Code section 410(b)(3), (4), and (5), which might be considered to exclude from the count collective bargaining employees, employees not meeting a plan's age and service requirements, and employees in separate lines of business.

Cap Amount

Under new section 4006(a)(3)(H)(i) of ERISA, the per-participant variable-rate premium is capped at ''$5 multiplied by the number of participants in the plan as of the close of the preceding plan year.'' PBGC interprets this to mean that the participant count is to be taken as of the premium snapshot date described in the premium rates regulation and PBGC's premium instructions (generally the last day of the plan year preceding the premium payment year). This is consistent with PBGC's interpretation of the nearly identical language in existing section 4006(a)(3)(E)(i) of ERISA. This participant count is the same as the count used as a multiplier under section 4006(a)(3)(A)(i) of ERISA for purposes of both the flat- and variable-rate premiums. Thus, an eligible plan's total variable-rate premium is capped at an amount equal to $5 multiplied by the square of the participant count. The cap is described in new § 4006.3 (b)(2), which includes an example of the computation of the cap taken from page 95 of the Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006, Prepared by the Staff of the Joint Committee on Taxation (August 3, 2006) (*http://www.house.gov/jct/x-38–06.pdf*).

Termination Premium

Section 8101(b) of DRA 2005 adds a new paragraph (7) to the end of section 4006(a) of ERISA, creating a new ''termination premium'' that applies only where certain distress and involuntary terminations occur and then only for three years. However, although only section 4006 of ERISA is amended, subparagraph (D) of new paragraph (7) in effect modifies section 4007 of ERISA as well. Sections 401(b) and 402(g)(2)(B) of PPA 2006 make changes to the termination premium rules of DRA 2005.

Termination Dates Covered

Section 8101(d)(2)(A) of DRA 2005 (which does not amend ERISA) restricts the new termination premium to ''plans terminated after December 31, 2005.'' (Section 401(b)(1) of PPA 2006 repeals new section 4006(a)(7)(E) of ERISA, added by DRA 2005, which provided that the termination premium would not apply ''with respect to any plan terminated after December 31, 2010.'') This time restriction is reflected in new § 4007.13(a)(1) introductory text.

Section 8101(d)(2)(B) of DRA 2005 further restricts the application of the new termination premium in certain bankruptcy situations. If a plan ''is terminated during the pendency of any bankruptcy reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),'' the new premium does not apply ''if the proceeding is pursuant to a bankruptcy filing occurring before October 18, 2005.'' Under section 402(g)(2)(B)(ii) of PPA 2006, this limitation does not apply to an ''eligible plan'' under section 402(c)(1) of PPA 2006 (generally a plan of a commercial passenger airline or airline catering service) while a funding election under section 402(a)(1) of PPA 2006 is in effect for the plan. These provisions are in new § 4007.13(a)(2) and (3).

These time restrictions on the applicability of the new premium turn on when a plan is ''terminated.'' PBGC believes that the most natural reading of these provisions is that the date to look to is the termination date under section 4048 of ERISA. Focusing on the section 4048 termination date is also consistent with other provisions of DRA 2005 and implementing regulations discussed below. This interpretation is reflected throughout the termination premium provisions added by this rule.

Types of Terminations Covered

Under new section 4006(a)(7)(A) of ERISA, the termination premium applies where ''there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) [of ERISA] or section 4042 [of ERISA].'' Section 4041(c) of ERISA provides for distress terminations; ERISA section 4042 provides for involuntary terminations.

Under ERISA section 4041(c)(1), a distress termination of a plan may occur only if each contributing sponsor and each member of any contributing sponsor's controlled group meets one of the ''distress tests'' in clauses (i), (ii), and (iii) of section 4041(c)(2)(B). The tests are that the person is the subject of a bankruptcy liquidation proceeding (clause (i)), that the person is the subject of a bankruptcy reorganization proceeding (clause (ii)), or that the person is suffering business hardship (clause (iii)).

Although typically all contributing sponsors and controlled group members meet the same distress test, that is not required for a distress termination under section 4041(c). Thus, while terminations where all contributing sponsors and controlled group members meet the test in clause (i) seem to be excluded from applicability of the termination premium, it is not clear from the statutory language whether the termination premium is to apply to terminations where one or more contributing sponsors and/or controlled group members meet the clause (i) test but others meet the tests in clauses (ii) and/or (iii). Examples of such situations

would be where there are two contributing sponsors, one liquidating and one reorganizing; where the sole contributing sponsor is liquidating but there are controlled group members that are reorganizing; and where the sole contributing sponsor is reorganizing but the controlled group members are liquidating.

The statutory language provides no basis for distinguishing among these examples or others that might be cited. All contributing sponsors and controlled group members are liable for plan underfunding under ERISA section 4062 and (as discussed below) for the termination premium (if it applies), and they must all satisfy one or another distress test under ERISA section 4041(c)(2)(B) for a distress termination to take place. This suggests that all these entities should be considered responsible as a group for the consequences of plan termination and that the fact that one entity among several is liquidating should not shield the others from liability. PBGC thus interprets new section 4006(a)(7)(A) of ERISA as applying the termination premium in any distress termination case where at least one contributing sponsor or controlled group member meets the distress test in either clause (ii) or (iii) of section 4041(c)(2)(B) (i.e., is not liquidating).

New § 4007.13(a)(1)(i) and (ii) deals with the types of terminations covered by the termination premium.

Payers

Section 4007(a) of ERISA places responsibility for paying PBGC premiums on the ''designated payor'' of a plan, and section 4007(e)(1)(A) of ERISA identifies the designated payor of a single-employer plan as the contributing sponsor or plan administrator. However, new section 4006(a)(7)(D)(i)(II) of ERISA, as added by section 8101(b) of DRA 2005, provides that notwithstanding section 4007, the designated payor of the new termination premium is ''the person who is the contributing sponsor as of immediately before the termination date.'' It thus appears that the designated payor is to be identified as of the day before the termination date under section 4048 of ERISA. Similarly, this rule provides for identification of members of the contributing sponsor's controlled group (which are jointly and severally liable for premiums under section 4007(e)(2) of ERISA) as of the same day. These provisions are in new § 4007.13(g).

Participants

Under new section 4006(a)(7)(A) of ERISA, the termination premium is based on the number of ''participants in the plan immediately before the termination date.'' It thus appears that participants are to be counted—for purposes of computing the termination premium—as of the day before the termination date under section 4048 of ERISA (the same day on which the contributing sponsor and controlled group members are determined). Section 4006.6 of the premium rates regulation already includes a definition of ''participant'' (which is used in computing the flat-rate premium), and DRA 2005 suggests no reason to depart from that definition for purposes of the termination premium. New § 4006.7(b) deals with these points.

Due Dates

The termination premium is payable each year for three years. Under new section 4006(a)(7)(D)(i)(I) of ERISA, as added by section 8101(b) of DRA 2005, the new premium is due within 30 days after the beginning of each of three ''applicable 12-month periods,'' which are in turn described in new section 4006(a)(7)(C). New section 4006(a)(7)(C)(i)(I) provides that in general, the first applicable 12-month period starts with ''the first month following the month in which the termination date occurs.'' (From this it is evident that calendar months are meant.) Under new section 4006(a)(7)(C)(i)(II), the second and third applicable 12-month periods are simply the two 12-month periods that follow the first applicable 12-month period. The general rule regarding termination premium due dates is in new § 4007.13(d).

But new section 4006(a)(7)(C)(ii) of ERISA defers the beginning of the first applicable 12-month period (and thus the due dates) in certain bankruptcy reorganization cases. This deferral rule comes into play where ''the requirements of subparagraph (B) [of new section 4006(a)(7) of ERISA] are met in connection with the termination of the plan . . ..'' (Section 401(b)(2) of PPA 2006 corrected an erroneous reference to ''subparagraph (B)(i)(I)'' in new section 4006(a)(7)(C)(ii) of ERISA.) Subparagraph (B) of new section 4006(a)(7)(B) of ERISA defers the applicability of the termination premium for distress or involuntary plan terminations that occur when bankruptcy reorganization proceedings are pending for terminations ''under section 4041(c)(2)(B)(ii) [of ERISA] or under section 4042 [of ERISA].'' Following the same reasoning discussed above regarding new section 4006(a)(7)(A) of ERISA (the general termination premium applicability provision), PBGC concludes that the bankruptcy reorganization deferral provision in new section 4006(a)(7)(B) of ERISA is meant to apply to a distress termination only when at least one contributing sponsor or controlled group member satisfies the bankruptcy reorganization test in section 4041(c)(2)(B)(ii) .

In order for the due date deferral rule in new section 4006(a)(7)(C)(ii) of ERISA to apply, the requirements of subparagraph (B) of section 4006(a)(7) of ERISA must be met ''with respect to 1 or more persons described in such subparagraph'' (that is, one or more persons must be reorganizing in bankruptcy as described in subparagraph (B)). If so, then the first applicable 12-month period begins with ''the first month following the month which includes the earliest date as of which each such person is discharged or dismissed in the case described in such clause [sic] in connection with such person.'' (The only clause mentioned in section 4006(a)(7)(C)(ii) of ERISA is clause (i)(I) of section 4006(a)(7)(C), which describes the first applicable 12-month period that applies if the special bankruptcy rule does not. Thus the reference to ''such clause'' appears to be intended to refer to ''such subparagraph''—that is, subparagraph (B)—and PBGC so interprets the reference.)

However, although subparagraph (B) of new section 4006(a)(7) of ERISA describes a case—a bankruptcy case—it does not describe a person. The only person mentioned in subparagraph (B) is ''such person,'' with no cross-reference to another place where the person is described. Nonetheless, it seems clear that the person referred to must be a person that has a relationship to both the plan and the bankruptcy proceeding mentioned in subparagraph (B). Subparagraph (B) contains parenthetical language that is essentially identical to parenthetical language that appears in section 4041(c)(2)(B)(ii) of ERISA (which describes the bankruptcy reorganization test for distress terminations). In section 4041(c)(2)(B)(ii), the words ''such person'' in the parenthetical language refer to a contributing sponsor or member of a contributing sponsor's controlled group. PBGC infers that ''such person'' in new section 4006(a)(7)(B) of ERISA is meant to refer likewise to a contributing sponsor of the terminated plan or member of a contributing sponsor's controlled

group—determined (consistent with the designated payor provision in new section 4007(a)(7)(D)(i)(II)) as of the day before the termination date under section 4048 of ERISA.

This inference is supported by the observation that these same persons—contributing sponsors and controlled group members—are the persons liable for the termination premium. It appears that Congress's intent was to defer the due date for the termination premium until the persons liable to pay it were not in bankruptcy proceedings. Accordingly, where the special bankruptcy rule for due dates applies, it is necessary to identify every contributing sponsor and controlled group member that was involved in bankruptcy reorganization proceedings on the termination date and determine the date when each one left bankruptcy—through dismissal of or discharge in the proceeding—or ceased to exist. (If an entity ceases to exist, its failure to emerge from bankruptcy should not postpone the termination premium due date.) Under new section 4006(a)(7)(C)(ii), the first applicable 12-month period for the termination will then begin with the calendar month that next begins following the last such date.

This bankruptcy due date deferral provision is in new § 4007.13(e).

One due date issue not addressed by the statute is that the agreement or court action establishing a plan's termination date under ERISA section 4048 may occur well after the termination date so established. Where a termination date is thus set as a date in the past, one or more statutory due dates for the termination premium may already have passed when the termination date becomes known. Thus, termination premium payments could be overdue before it was determined that they were owed.

In cases of that kind, PBGC considers it appropriate to provide that where the termination date set is in the past, the first applicable 12-month period does not begin immediately after the month in which the termination date falls, but rather begins immediately after the month in which the termination date is established. Where the special bankruptcy rule for due dates applies, this rule would come into play if the termination date was established after all contributing sponsors and controlled group members were out of bankruptcy reorganization proceedings, and would defer the beginning of the first applicable 12-month period until immediately after the month in which the termination date was established. This provision is in new § 4007.13(f).

Other Bankruptcy Issues

The parenthetical language in new section 4006(a)(7)(B) of ERISA—''(or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought)''—shows that Congress focused on the fact that bankruptcy proceedings can be converted back and forth between liquidation and reorganization proceedings. But neither section 4006(a)(7)(B) nor section 4006(a)(7)(C)(ii) (which describes the special first applicable 12-month period) mentions conversion of a reorganization case to a liquidation case as being sufficient to trigger the beginning of the first applicable 12-month period. It thus appears that if a plan terminates during pendency of a bankruptcy reorganization proceeding, the subsequent conversion of the proceeding to a liquidation proceeding would not keep the first applicable 12-month period from being postponed until the (liquidation) bankruptcy proceeding was dismissed or the contributing sponsor or controlled group member discharged. This could be of significance where there were other persons liable for the termination premium that were not (or were no longer) in bankruptcy.

Section 8101(d)(2)(B) of DRA 2005 (which, as discussed above, excludes from the termination premium terminations that occur during the pendency of bankruptcy reorganization proceedings pursuant to a filing before October 18, 2005) says nothing about the persons involved in such proceedings. Following the reasoning above, PBGC concludes that section 8101(d)(2)(B) is intended to apply only where the subject of a pending bankruptcy proceeding is a contributing sponsor of the terminated plan or a member of a contributing sponsor's controlled group (and that these persons are to be identified as of the day before the termination date under section 4048 of ERISA). Section 8101(d)(2)(B) also does not mention conversion of a bankruptcy case from a liquidation proceeding to a reorganization, as new section 4006(a)(7)(B) of ERISA does. But the language of section 8101(d)(2)(B) is consistent with the interpretation that—like section 4006(a)(7)(B)—it covers bankruptcy proceedings begun as liquidation proceedings and converted to reorganization proceedings before the termination date under section 4048 of ERISA.

Termination Premium Rate

Under new section 4006(a)(7) of ERISA as added by section 8101(b) of DRA 2005, the termination premium is $1,250 per participant per year for three years. But under section 402(g)(2)(B) of PPA 2006 (which does not amend ERISA), the rate is increased from $1,250 to $2,500 where a commercial passenger airline or airline catering service elects funding relief (an extended underfunding amortization period and lenient assumptions for valuing liabilities) for a frozen plan under section 402(a)(1) of PPA 2006, if the plan terminates during the first five years of the funding relief period, unless the Secretary of Labor determines that the termination resulted from extraordinary circumstances such as a terrorist attack or other similar event.

This rule adds a new § 4006.7 to the premium rates regulation providing that the amount of the termination premium with respect to each applicable 12-month period is the premium rate (generally $1,250) times the number of participants, determined as of the day before the termination date, with a cross-reference from § 4006.3 (where the flat and variable premium rates are set forth). New § 4006.7(b) also explains the circumstances in which the termination premium rate is $2,500 rather than $1,250.

Filing Requirements

New § 4007.13(b) makes each contributing sponsor and controlled group member (determined as of the day before the termination date under section 4048 of ERISA) responsible for filing required termination premium information and payments, and (where there is more than one such person) provides that any one can file on behalf of all of them. This provision ensures that, so long as there is at least one person still in existence that is liable for the termination premium, there will be at least one identifiable entity with responsibility to file. This provision is similar to § 4010.3 of PBGC's regulation on Annual Financial and Actuarial Information Reporting (Part 4010 of PBGC's regulations) and § 4043.3(a) of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (Part 4043 of PBGC's regulations). Thus, only a single filing of the premium and required premium information is required, but if it is not timely made, PBGC could seek enforcement against any or all contributing sponsors and controlled group members.

Late Payment Penalty

Section 4007.13(c) provides for a discretionary ''facts-and-circumstances'' penalty for failure to pay the termination premium timely, instead of the automatic 1 percent or 5 percent penalty that applies to late payment of flat- and variable-rate premiums under § 4007.8(a). PBGC wants to preserve flexibility in penalizing failures to pay the new premium in full and on time while it gains experience with the new premium. The penalty is limited to 100 percent of the amount of termination premium not timely filed.

Other Regulatory Provisions

In addition to the provisions discussed above, new § 4007.13 supplements provisions in existing sections of Part 4007 that also apply to the termination premium. This rule also amends several sections in the existing premium payment regulation to eliminate inconsistencies or potential inconsistencies between existing language in those sections and the termination premium provisions.

Public Comment

PBGC received one public comment on the proposed rule. The comment addressed the termination premium. The commenter expressed concern that ''Congress may not have considered the financial ramifications of'' the termination premium. The commenter requested that PBGC ''adopt a facts-and-circumstance approach in collecting the termination premium fee'' and ''consider limiting its recoveries of this termination premium to amounts that each company can afford to pay without jeopardizing its ability to stay in business.''

PBGC has accepted less than full payment on its claims for unfunded benefit liabilities, unpaid funding contributions, and unpaid flat- and variable-rate premiums in circumstances in which, like other creditors, it is forced to compromise those claims. But the language of section 8101(b) of DRA 2005 makes clear that a Congressional purpose in imposing the termination premium was to discourage the termination of underfunded pension plans. Congress has made clear that, when a plan terminates under the circumstances described in new section 4006(a)(7)(B) of ERISA during the pendency of a bankruptcy reorganization, the liability for the termination premium arises after emergence from bankruptcy, indicating a specific intent to avoid a limited recovery of the termination premium in bankruptcy and to ensure a full recovery post-bankruptcy. In light of this Congressional intent, it would be inappropriate for PBGC to adopt a policy of routinely settling termination premium claims for less than the full amount.

PBGC recognizes that plan sponsors may face difficult financial choices because of the termination premium. Accordingly, PBGC encourages sponsors that may be facing termination premium liability to contact PBGC as early as possible to discuss.

Technical Changes

PBGC is taking this opportunity to make some technical changes (unrelated to DRA 2005 or PPA 2006) to its regulations on Premium Rates and Payment of Premiums.

Section 4006.3 of the premium rates regulation refers to basic benefits guaranteed under section 4022(a) of ERISA (which relates only to single-employer plans) and omits mention of section 4022A(a) of ERISA (which relates to multiemployer plans). This rule adds a reference to section 4022A(a).

Section 4007.11(d) of the premium payment regulation states that where proration of the flat- and variable-rate premiums is available under § 4006.5(f) of the premium rates regulation, the un-prorated premium must be paid in full (even if the plan would be entitled to a refund). This provision is anachronistic: PBGC now permits payment of the prorated amount under § 4006.5(f), rather than requiring that a filer pay the un-prorated amount and request a refund. This rule removes the outdated provision.

Section 4007.11(e) of the premium payment regulation permits PBGC to return improper filings and consider them not made. PBGC is not exercising this authority, and the provision is unnecessary; PBGC has authority to assess penalties under ERISA section 4071 for failure to submit material information under the premium payment regulation. This rule removes § 4007.11(e).

Applicability

The regulatory changes made by this rule to implement the provisions of section 8101 of DRA 2005 apply (as section 8101 of DRA 2005 does) to plan years beginning after 2005 and to terminations with termination dates after 2005 (subject to the special rule for bankruptcies filed before October 18, 2005). The regulatory changes made by this rule to implement the provisions of section 405 of PPA 2006 apply (as section 405 of PPA 2006 does) to plan years beginning after 2006.

Compliance With Rulemaking Guidelines

E.O. 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed the rule under Executive Order 12866. Pursuant to section 1(b)(1) of E.O. 12866 (as amended by E.O. 13422), PBGC identifies the following specific problems that warrant this agency action:

- PBGC's regulations do not reflect the statutory changes made by DRA 2005 and PPA 2006 regarding the flat premium rate, the cap on the variable-rate premium, and the termination premium. This problem is significant because, unless the regulations are revised, the public may be confused or misled by the anachronistic regulatory provisions.
- PPA 2006 does not define the term ''employee'' for purposes of the variable-rate premium cap for plans of small employers. This problem is significant because the absence of a definition will likely lead to inconsistent application of the cap rules among filers.
- The termination premium language in DRA 2005 is complex and in some respects unclear. This problem is significant because the complexity and lack of clarity may lead to inconsistent interpretation of the termination premium rules among potential termination premium filers.
- DRA 2005 does not deal with the situation where the termination date is set after the premium due date as described in the statute. This problem is significant because, without a relief rule, potential filers in such situations would be unable to comply with the filing requirements.
- DRA 2005 does not specify the entities responsible for keeping termination premium records or making termination premium filings, and the existing provisions of PBGC's regulations are inapposite. This problem is significant because the absence of a clear assignment of responsibility could impede enforcement.
- Under PBGC's existing regulations, late payment penalties are determined according to a formula. This is a significant problem in the termination premium area because the termination premium requirement is new, neither PBGC nor potential filers are familiar with it, and assessment of late payment penalties according to a mechanical formula could be inappropriate.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. This rule implements statutory changes made by Congress. It provides guidance on how to calculate, pay, and substantiate the premiums prescribed by statute and imposes no significant burden beyond the burden imposed by statute. Furthermore:

- The statutorily imposed increase in the flat-rate premium is at most $11 per participant per year, which does not constitute a significant economic impact where a plan has a small number of participants. Although the flat-rate premium will increase as the number of participants increases, the economic impact of the flat-rate premium relative to the size of the entity will remain fairly constant and will not be significant for a substantial number of entities of any size.
- The statutorily imposed cap on the variable-rate premium will save qualifying plans money. The rule simply interprets the statutory provisions.
- The statutorily imposed termination premium will not affect a substantial number of entities of any size.

Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply.

Paperwork Reduction Act

The information collection requirements relating to the flat-rate and variable-rate premiums have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0009, expires April 30, 2008).

The information collection requirements relating to the termination premium have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0064, expires October 31, 2010).

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.

PBGC needs information relating to the termination premium to identify the plan for which a termination premium is paid to PBGC, to verify the determination of the premium, and to identify the persons liable for the premium. PBGC has maximized the practical utility of the information collection and minimized the burden by designing the collection to provide the information PBGC needs to administer and enforce the termination premium requirements without requiring the submission of information that is extraneous to that function. Specifically, the Form T that PBGC has designed for submission of termination premium payments requests:

- The name, Employer Identification Number, and Plan Number for the terminated plan last reported in a PBGC flat- and/or variable-rate premium filing (to identify the plan).
- The date of plan termination (to identify the date as of which participants are counted and contributing sponsors and controlled group members liable for the premium are identified).
- The participant count (on which the termination premium is based).
- The termination premium rate (generally $1,250, but $2,500 for certain airline or airline-related plans).
- The amount of the termination premium owed.
- Whether this is the first, second, or third payment (some data should match from payment to payment, whereas other data may not).
- The payment method (indicating whether PBGC should be looking for a check with the Form T or expecting an electronic funds transfer).
- The name and address of the filer (to identify the filer).
- A list of all persons (other than the filer) that are liable for the termination premium (for enforcement purposes).

Because the number of plan terminations to which the termination premium applies is expected to be relatively small (about 25 per year), the total burden of compliance will be minimal.

List of Subjects

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ For the reasons given above, PBGC is amending 29 CFR parts 4006 and 4007 as follows.

PART 4006—PREMIUM RATES

■ 1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 2. In § 4006.3:

■ a. The introductory text is amended by removing the words ''§ 4006.5 (dealing with exemptions and special rules)'' and adding in their place the words ''§ 4006.5 (dealing with exemptions and special rules) and § 4006.7 (dealing with premiums for certain terminated single-employer plans)''; and by removing the words ''section 4022(a)'' and adding in their place the words ''section 4022(a) or section 4022A(a)''.

■ b. Paragraph (a) introductory text is amended by removing the words ''multiplied by—'' and adding in their place the words ''multiplied by the applicable flat premium rate determined under paragraph (c) of this section.''.

■ c. Paragraphs (a)(1) and (a)(2) are removed.

■ d. Paragraph (b) is revised, and new paragraphs (c) and (d) are added, to read as follows:

§ 4006.3 Premium rate.

* * * * *

(b) *Variable-rate premium.*

(1) *In general.* Subject to the limitation in paragraph (b)(2) of this section, the variable-rate premium is $9 for each $1,000 of a single-employer plan's unfunded vested benefits, as determined under § 4006.4.

(2) *Cap on variable-rate premium.* If a plan is described in paragraph (b)(3) of this section for the premium payment year, the variable-rate premium does not exceed $5 multiplied by the square of the number of participants in the plan on the last day of the plan year preceding the premium payment year. For example, if the number of participants in the plan on the last day of the plan year preceding the premium payment year is 20, the variable-rate premium does not exceed $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2{,}000$).

(3) *Plans eligible for cap.* A plan is described in this paragraph (b)(3) for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(4) *Meaning of ''employee.''* For purposes of paragraph (b)(3) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

(c) *Applicable flat premium rate.* The applicable flat premium rate is:

(1) For a premium payment year beginning before 2006—

(i) For a single-employer plan, $19, and

(ii) For a multi-employer plan, $2.60.

(2) For a premium payment year beginning in 2006—

(i) For a single-employer plan, $30, and

(ii) For a multi-employer plan, $8.

(3) For a premium payment year beginning after 2006, the greater of—

(i) The applicable flat premium rate for plan years beginning in the calendar year preceding the calendar year in which the premium payment year begins, or

(ii) The adjusted flat rate determined under paragraph (d) of this section for the premium payment year.

(d) *Adjusted flat rate.* The adjusted flat rate for a premium payment year beginning after 2006 is determined by—

(1) Multiplying the applicable flat premium rate for 2006 by the ratio of—

(i) The national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the two calendar years preceding the calendar year in which the premium payment year begins, to

(ii) The national average wage index (as so defined) for 2004; and

(2) Rounding the result to the nearest multiple of $1 (rounding up any unrounded result that equals some whole number of dollars plus 50 cents).

■ 3. New § 4006.7 is added to read as follows:

§ 4006.7 Premium rate for certain terminated single-employer plans.

(a) The premium under this section (''termination premium'') applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants in the plan, determined as of the day before the termination date under section 4048 of ERISA, multiplied by the termination premium rate. In general, the termination premium rate is $1,250. However, the termination premium rate is $2,500 for an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See § 4007.13 of this chapter for further rules about termination premiums.

PART 4007—PAYMENT OF PREMIUMS

■ 4. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 5. Section 4007.3 is amended by removing the words ''The plan administrator'' and adding in their place the words ''Subject to the provisions of § 4007.13, the plan administrator''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

■ 6. In § 4007.7, paragraph (a) is amended by removing ''§ 4007.11'' and adding in its place the words ''this part''.

■ 7. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words ''If any premium payment due'' and adding in their place the words ''Subject to the provisions of § 4007.13, if any premium payment due''; and by removing ''§ 4007.11'' and adding in its place the words ''this part''.

■ b. Paragraph (a)(1)(i) is amended by removing the word ''plan's''.

■ c. Paragraph (a)(1) introductory text is revised to read as follows:

§ 4007.8 Late payment penalty charges.

(a) * * *

(1) *Penalty rate; in general.* Except as provided in paragraph (a)(2) of this section, the penalty rate is—

* * * * *

■ 8. In § 4007.9, paragraph (a) is amended by removing the words ''by a plan administrator''; and by removing the words ''that plan's'' and adding in their place the words ''a plan's''.

■ 9. In § 4007.10:

■ a. Paragraph (a)(1) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper under paragraph (a)(3) of this section''.

■ b. Paragraph (a)(2) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

■ c. Paragraph (b) is amended by removing the words ''for any premium payment year''.

■ d. Paragraph (c)(1) is amended by removing the words ''The plan administrator'' and adding in their place the words ''A designated recordkeeper''.

■ e. Paragraph (c)(2) is amended by removing the words ''the plan administrator'' and adding in their place the words ''a designated recordkeeper''.

■ f. Paragraph (c)(2)(ii) is amended by removing the words ''plan administrator'' and adding in their place the words ''designated recordkeeper''.

■ g. New paragraph (a)(3) is added to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) * * *

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

* * * * *

■ 10. In § 4007.11:

■ a. Paragraph (a) introductory text is amended by removing the words ''The premium filing due date for small plans'' and adding in their place the words ''For flat-rate and variable-rate premiums, the premium filing due date for small plans''.

■ b. Paragraph (a)(3) introductory text is amended by removing the words ''the premium form or forms and payment or payments for the short plan year shall be filed by'' and adding in their place the words ''the due date or dates for the flat-rate premium and any variable-rate premium for the short plan year are''; and by removing the words ''for the premium forms and payments''.

■ c. Paragraph (c) introductory text is amended by removing the words ''the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before'' and adding in their place the words ''the due date for the flat-rate premium and any variable-rate premium for the first plan year of coverage of any new plan or newly covered plan shall be''.

■ d. Paragraph (d) is amended by removing the words ''to file the forms or forms prescribed by this part and to pay any premiums due'' and adding in their place the words ''to make flat-rate and (as applicable) variable-rate premium filings and payments under this part''; and by removing the last sentence of the paragraph.

■ e. Paragraph (e) is removed.

■ 11. In § 4007.12, paragraph (a) is amended by removing the words ''to file

the applicable forms and to submit the premium payment'' and adding in their place the words ''to make flat-rate and variable-rate premium filings and payments under this part''; and by removing the words ''liable for premium payments'' and adding in their place ''liable for flat-rate and variable-rate premium payments''.

■ 12. New § 4007.13 is added to read as follows:

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability*—(1) *In general.* This section applies where there is a ''DRA 2005 termination'' of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date under section 4048 of ERISA is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in § 4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the ''termination premium'').

(b) *Filing requirements; method of filing.* Notwithstanding § 4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding § 4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under § 4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding § 4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan's termination date under section 4048 of ERISA, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.* (1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan's termination date under section 4048 of ERISA—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the day before the plan's termination date under section 4048 of ERISA, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date under section 4048 of ERISA, a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged in any such proceeding, or

(iii) The person no longer exists.

(f) *Plan termination date in past when set.* If a plan's termination date under section 4048 of ERISA is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for

termination premiums with respect to the plan.

Issued in Washington, DC, this 2nd day of November, 2007.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E7–24423 Filed 12–14–07; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD00

Indian Oil Valuation

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending the existing regulations regarding valuation, for royalty purposes, of oil produced from Indian leases. These amendments will clarify and update the existing regulations.

DATES: Effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov*. The principal authors of this final rule are John Barder of Minerals Revenue Management, MMS, Department of the Interior, and Geoffrey Heath of the Office of the Solicitor, Department of the Interior, Washington, DC.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS published a proposed rule in the **Federal Register** on February 13, 2006 (71 FR 7453), referred to in this rule as the 2006 Indian Oil Proposed Rule or, simply, the proposed rule, that would amend the regulations governing the valuation for royalty purposes of crude oil produced from Indian leases. Before developing the proposed rule, MMS held a series of eight public meetings in March and June 2005 to consult with Indian tribes and individual Indian mineral owners and to obtain information from interested parties. The intent of the proposed rulemaking was to add more certainty to the valuation of oil produced from Indian lands, eliminate reliance on oil posted prices, and address the unique terms of Indian tribal and allotted leases—in particular, the major portion provision. Because of the response from Indian tribes and industry to the proposed rule, MMS plans to convene a negotiated rulemaking committee that will make recommendations regarding the major portion provision in Indian tribal and allotted leases.

For clarification, relevant rulemaking activity is listed below.

Publication date	Federal Register reference	Publication title	Referred to in this final rule as
July 7, 2006	71 FR 38545	Reporting Amendments Proposed Rule	2006 Reporting Amendments Proposed Rule.
February 13, 2006	71 FR 7453	Indian Oil Valuation Proposed Rule	2006 Indian Oil Proposed Rule.
March 10, 2005	70 FR 11869	Federal Gas Valuation Final Rule	2005 Federal Gas Final Rule.
		Public Workshop on Proposed Rule—Establishing Oil Value for Royalty Due on Indian Leases.	
February 22, 2005	70 FR 8556	(Proposed Rule of February 12, 1998 (63 FR 7089) and Supplementary Proposed Rule of January 5, 2000 (65 FR 403 are withdrawn).	2005 Establishing Oil Value for Royalty Due on Indian Leases—Workshop.
May 24, 2004 Effective August 1, 2004.	69 FR 29432	Federal Oil Valuation	2004 Federal Oil Final Rule Technical Amendment.
		Final Rule Technical Amendment	
May 5, 2004 Effective August 1, 2004.	69 FR 24959	Federal Oil Valuation	2004 Federal Oil Final Rule.
		Final Rule	
September 28, 2000	65 FR 58237	Establishing Oil Value for Royalty Due on Indian Leases: Proposed Rule.	2000 Indian Oil Proposed Rule.
March 15, 2000 Effective June 1, 2000—Amended 2004.	65 FR 14022	Establishing Oil Value for Royalty Due on Federal Leases: Final Rule.	2000 Federal Oil Final Rule.
February 28, 2000	65 FR 10436	Establishing Oil Value for Royalty Due on Indian Leases.	2000 Indian Oil Revised Supplementary Proposed Rule.
		Supplementary Proposed Rule and Notice of Extension of Comment Period.	
January 5, 2000	65 FR 403	Establishing Oil Value for Royalty Due on Indian Leases.	2000 Indian Oil Supplementary Proposed Rule.
		Supplementary Proposed Rule	
August 10, 1999: Effective January 1, 2000.	64 FR 43506	Amendments to Gas Valuation Regulations for Indian Leases.	1999 Indian Gas Final Rule.
		Final Rule	
April 9, 1998	63 FR 17349	Establishing Oil Value for Royalty Due on Indian Leases: Proposed Rule.	1998 Indian Oil Proposed Rule Comment Period Extension.
		Extension of Public Comment Period	
February 12, 1998	63 FR 7089	Establishing Oil Value for Royalty Due on Indian Leases.	1998 Indian Oil Proposed Rule.
		Proposed Rule	
January 15, 1988	53 FR 1184	Part 3—Revision of Oil Product Valuation Regulations and Related Topics.	1988 Oil Valuation Final Rule.
		Final Rule	

II. Comments on the Proposed Rule

The MMS received comments from the following entities: Two Indian tribes, three industry trade associations, eight oil and gas producers, and one individual. The comments were generally not supportive of the changes outlined in the 2006 Indian Oil Proposed Rule. The most controversial topics were the proposed modification of Form MMS–2014, Report of Sales and Royalty Remittance, as part of the proposed major portion calculations, and the proposed transportation allowance changes.

A. Definitions

The following chart summarizes the changes to definitions adopted in this final rule. The comments addressing the specific issues are summarized in the discussion that follows the chart.

CHANGES TO DEFINITIONS AT 30 CFR 206.51

Definition	Change proposed in 2006 Indian Oil Proposed Rule	This final rule
Affiliate	Add new definition	Adds new definition as proposed.
Area	Revise definition	Not adopted as proposed.
Arm's-length contract	Revise definition	Adopts as proposed.
Designated area	Add new definition	Not adopted as proposed.
Exchange agreement	Add new definition	Adds new definition as proposed.
Gross proceeds	Revise definition	Revises as proposed.
Indian tribe	Revise definition	Revises as proposed.
Individual Indian mineral owner	Add new definition	Adds new definition as proposed.
Lessee	Revise definition	Revises proposed definition.
Lessor	Add new definition	Adds new definition as proposed.
Like-quality lease products	Eliminate	Eliminates as proposed.
Like-quality oil	Replace and modify existing definition of Like-Quality Lease Products.	Adds new definition as proposed.
Load oil	Eliminate	Eliminates as proposed.
Location differential	Add new definition	Adds new definition as proposed.
Marketable condition	Revise definition	Revises proposed definition in light of comments.
Marketing affiliate	Eliminate	Eliminates as proposed.
Minimum royalty	Eliminate	Eliminates as proposed.
Net profit share	Eliminate	Eliminates as proposed.
Net-back method	Eliminate	Eliminates as proposed.
Oil	Revise definition	Revises as proposed.
Oil shale	Eliminate	Eliminates as proposed.
Oil type	Add new definition	Not adopted as proposed.
Operating rights owner	Add new definition	Adds new definition as proposed.
Posted price	Eliminate	Eliminates as proposed.
Quality differential	Add new definition	Adds new definition as proposed.
Selling arrangement	Eliminate	Not eliminated as proposed.
Tar sands	Eliminate	Eliminates as proposed.

In the 2006 Indian Oil Proposed Rule, MMS proposed to add a definition of the term *affiliate* and revise the definition of *arm's-length contract* in § 206.51 to conform to the 2004 Federal Oil Final Rule and to align the rule with the court's decision in *National Mining Association* v. *Department of the Interior,* 177 F.3d 1 (DC Cir. 1999).

Comment: The MMS received one comment regarding the proposed change to the definition of *affiliate.* The industry association commenter stated that ''[o]pposing economic interest is not a defined term, and MMS does not state any factors that will be considered in determining whether parties to a contract have opposing economic interest. MMS should define the term 'opposing economic interests' and incorporate determining factors from the Vastar decision in the definition.''

MMS Response: The MMS examines whether two parties have opposing economic interests on a case-by-case basis under existing precedents. We have included the undefined phrase ''opposing economic interest'' in our definition of ''arm's-length contract'' since the oil royalty valuation rules were first issued in 1988.

The definition of ''arm's-length contract'' as originally proposed in 1987 did not include the requirement for ''opposing economic interests.'' Our 1987 proposal defined ''arm's-length contract'' simply to include ''a contract or agreement between independent, nonaffiliated persons.'' 52 FR 1858 (January 15, 1987). However, at the urging of a state commenter, MMS included the ''opposing economic interest'' concept in the final rule in 1988. The state commenter stressed that even though the inclusion of additional criteria such as ''adverse economic interest'' would increase subjectivity, ''the appeals process is in place to provide protection against arbitrary decisions.''

The 1988 rule established the basic principles of MMS royalty valuation that have not changed over time. See *Revision of Oil Product Valuation Regulations and Related Topics*, 53 FR 1184 (Jan. 15, 1988) (''Although the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell.'') We affirm those principles today.

As was predicted by the commenter in 1988, the appeals process has not only provided protection against arbitrary decisions, but it has also resulted in administrative precedent interpreting the phrase ''opposing economic interest.'' For example, through appeals such as *Vastar Resources, Inc.*, 167 IBLA 17 (2005), the Department of the Interior has determined that ''opposing economic interests'' need not be absolute in order to meet the definition of an ''arm's-length contract.'' Accordingly, MMS will focus on the parties' economic interests in the specific contract at issue,

and the fact that the parties may have common interests elsewhere does not necessarily negate their ability to have opposing economic interests with respect to the contract under view. Further, opposing economic interests are rarely absolute even within a single contract. For example, between two parties to an oil and gas lease, some economic interests are common and some are opposed. When oil is taken in kind, the common economic interest of production may appear to outweigh the remaining opposing economic interests. In *Vastar*, the Interior Board of Land Appeals considered objective factors such as the contentious negotiations leading to the execution of the contract, the terms of the contract, and the parties' subsequent conduct as evidence of the parties' opposing economic interests regarding the particular sales contract.

For purposes of interpreting the definition of ''opposing economic interests,'' MMS will follow the decisions of the Interior Board of Land Appeals until further rulemaking prescribes otherwise.

This final rule adopts the proposed definitions of *affiliate* and *arm's-length contract.* The MMS believes the existing definitions at § 206.51, should be amended to be consistent with the DC Circuit's decision in *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (DC Cir. 1999). The new definition of *affiliate* and the clarification to the definition of *arm's-length contract* will also make the definitions consistent with the 2004 Federal Oil Final Rule.

As we explained in amending the definition of ''affiliate'' in the Federal crude oil valuation rule promulgated on March 15, 2000 (effective June 1, 2000):

> In *National Mining Association* v. *Department of the Interior*, 177 F.3d 1 (DC Cir. 1999) (decided May 28, 1999), the United States Court of Appeals for the District of Columbia Circuit addressed the Office of Surface Mining Reclamation and Enforcement's (OSM's) so-called ''ownership and control'' rule at 30 CFR 773.5(b). That rule presumed ownership or control under six identified circumstances. One of those circumstances was where one entity owned between 10 and 50 percent of another entity. The court found that OSM had not offered any basis to support the rule's presumption ''that an owner of as little as ten per cent of a company's stock controls it.'' 177 F.3d at 5. The court continued, ''While ten percent ownership may, under specific circumstances, confer control, OSM has cited no authority for the proposition that it is ordinarily likely to do so.'' Id. * * *
>
> In the final rule, MMS is revising the definition of ''affiliate'' in light of the National Mining Association decision. In the event of ownership or common ownership of between 10 and 50 percent, paragraph (2) of the definition in the final rule, instead of creating a presumption of control, identifies a number of factors that MMS will consider in determining whether there is control under the circumstances of a particular case.

65 FR 14022, 14039 (Mar. 15, 2000). We adopt the same amendment here for Indian leases. Thus, the final rule replaces the presumption of control (and the consequent presumption of a non-arm's-length relationship) in the current rule, in the event of ownership or common ownership of 10 through 50 percent of the voting stock, with a case-by-case examination of the circumstances.

We emphasize that MMS will not presume control in the event of ownership or common ownership of 10 through 50 percent. MMS anticipates that in considering the factors identified in paragraph (2) of the definition, the facts of a particular case would demonstrate control (and therefore affiliation) only in exceptional circumstances. MMS anticipates that the facts will show that the relationship between corporate entities with minority ownership or common ownership is an arm's-length relationship in the vast majority of cases. MMS presumes in the absence of other evidence that transactions between corporate entities with minority ownership or common ownership are undertaken in good faith. The applicable rule is generally expressed in State Public Utilities Commission *ex rel.* Springfield v. Springfield Gas and Electric Company, 291 Ill. 209, 234.

Whether a contract or arrangement between the lessee and its purchaser should be regarded as arm's length or non-arm's length does not depend on whether the lease is a Federal lease or an Indian lease.

The MMS proposed to change the definition of *area* as part of the proposed major portion value calculation changes. This final rule does not include the proposed change to the definition of *area.* That term is still used in the major portion valuation provisions, which remain unchanged in this final rule for the reasons explained below. Therefore, the definition of *area* at § 206.51 is retained.

This final rule does not include the proposed definition of *designated area* because, as explained below, this final rule does not adopt the proposed major portion valuation provisions.

This final rule adopts the proposed definition of *exchange agreement*, which is used in the new valuation provisions at § 206.52(e).

This final rule includes the proposed changes to the definition of *gross proceeds.* This change is consistent with the 2004 Federal Oil Final Rule and makes helpful technical clarifications. There were no comments on this proposed change.

This final rule adopts the proposed definitions of *Indian tribe* and *individual Indian mineral owner.* The new wording clarifies that this rule applies to Indian tribes for whom the U.S. holds a mineral in trust or to individual Indians who hold title to a mineral subject to a restriction against alienation. This is more specific than the former reference to lands held in trust or subject to a restriction against alienation.

This final rule adopts the proposed definitions of *lessee* and *operating rights owner*, except that the final rule does not adopt clause (3) of the proposed definition of ''lessee.'' With one exception, the changes in wording that are adopted are technical corrections and clarifications.

As the Court noted in *Fina Oil and Chemical Corp.* v. *Norton*, 332 F.3d 672 (DC Cir. 2003), regarding gross proceeds and the definition of ''lessee,'' the term ''lessee'' was defined by Federal statute as ''any person to whom the United States, an Indian tribe, or an Indian allottee issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.'' Public Law No. 97–451 § 3(7), 96 Stat. 2447, 2449 (amended in 1996 to read ''any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned''), codified at 30 U.S.C. 1702(7). The 1988 regulations followed this statutory definition. In the *Fina* case, the court found that MMS improperly sought to use a wholly-owned subsidiary's arm's-length resale proceeds as the measure of the lessee's gross proceeds in conflict with the regulation's plain language. (Under the 1988 valuation rules, the affiliate's resale proceeds were used as value only if the affiliate was a ''marketing affiliate,'' defined as an affiliate of the lessee whose function was to acquire only the lessee's production and market that production. The royalty value of oil transferred non-arm's length to the marketing affiliate was the affiliate's gross proceeds, provided the marketing affiliate sold the oil at arm's length.) The *Fina* court suggested that if MMS believes that basing value on the intra-corporate transfer is too favorable to producers, it should amend the regulations through notice-and-comment rulemaking, not under the

guise of interpretation. MMS is doing so in this final rule in the revised 30 CFR 206.52(a).

In this respect, this rule is making the same change made in the Federal crude oil valuation rule in 2004 at 30 CFR 206.102(a). In many respects, this final Indian oil valuation rule follows the same organization and structure as the Federal oil valuation rule promulgated on March 15, 2000, as amended May 5, 2004. The final Federal oil valuation rule adopted in March 2000 did not distinguish between ''marketing affiliates,'' as defined in 1998, and other affiliates, because MMS adopted an altogether new valuation approach. That is, the value of oil produced from a Federal lease and transferred to any affiliate is now determined by the affiliate's ultimate disposition of that oil or, at the lessee's option under certain conditions, at an index-based value or other applicable measure. The definition of ''marketing affiliate'' therefore was removed from the Federal oil valuation rule.

In the Indian lease context, MMS did not propose, and this final rule does not include, an index-based valuation option because for the vast majority of Indian leases, it is either impractical or impossible to derive reliable adjustments for location and quality between the lease and a market center with reliable published index prices. Further, in view of the lower volumes and number of transactions involved for most Indian leases, such an option would serve little purpose. As explained elsewhere in this preamble, the final rule simply adopts the proposal to replace the ''benchmarks'' originally promulgated in 1988, which have proven to be difficult to apply in practice, with the first arm's-length sale (minus any transportation costs) as the basis of value in the event of a non-arm's-length transfer by the lessee, and where the oil is sold at arm's-length before refining—a rare circumstance in the context of Indian leases that produce crude oil.

Since the general valuation approach adopted today eliminates the ''marketing affiliate'' distinction by focusing on the first arm's-length sale, it is appropriate that the definition of ''marketing affiliate'' be removed from these regulations. However, it does not follow that the definition of ''lessee'' needs to be amended. Moreover, MMS has written this rule in plain English format, using the term ''you'' to mean a lessee, operator, or other person who pays royalties under this subpart. In all, particularly in light of the removal of the definition of ''marketing affiliate,'' MMS is adopting the definition of ''lessee'' as proposed without proposed clause (3) incorporating affiliates. As the term ''lessee'' is used throughout the final rule, it either refers to the royalty payor or is specifically distinguished from the term ''affiliate.'' This change continues to support the general valuation approach adopted today and is consistent with statutory interpretation principles set out in *United States* v. *Bestfoods*, 524 U.S. 51, 61 (1998).

Currently, there is no definition of the term *lessor* in any of the Indian valuation regulations. Because this term is used in numerous places in the regulations, MMS proposed to add a definition in the 2006 Indian Oil Proposed Rule. This final rule adopts the proposed definition of *lessor.*

This final rule does not include the proposed definition of *oil type* because the final rule does not adopt the proposed major portion provisions. As explained further below, MMS plans to refer the major portion issue to a negotiated rulemaking committee. In this final rule, the term *like-quality lease products* will be changed to *like-quality oil*, and the reference to similar legal characteristics in the current definition of like-quality lease products will be deleted. The term *like-quality lease products* is not used in the regulations governing Indian oil valuation at §§ 206.50 through 206.55. The definition at § 206.51 is identical to the definitions in the 2005 Federal Gas Final Rule and 1999 Indian Gas Final Rule (see §§ 206.151 and 206.171). The existing regulations at § 206.51 and the changes made in this final rule, however, refer to *like-quality oil*; and this final rule therefore will define that term. The existing definition refers to ''similar chemical, physical, and legal characteristics.'' Crude oil has not been price-controlled in the last 25 years, and there are no legal classifications of crude oil that have any bearing on royalty valuation issues. We therefore have deleted the reference to similar legal characteristics.

This final rule includes the proposed definitions of *location differential* and *quality differential* because those terms are used in the provisions governing valuation of oil disposed of under arm's-length exchange agreements.

In the 2006 Indian Oil Proposed Rule, MMS proposed to change the definition of the term *marketable condition* in § 206.51 to mean lease products

> that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract or transportation contract typical for disposition of production from the field or area.

The current definition refers to lease products

> that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Summary of Comments: Three industry associations commented on this proposed change. With respect to the proposed change in the definition of *marketable condition* to add a reference to transportation contracts, one industry association said:

> We do accept that MMS has the authority to require the lessee to put the oil in the condition that contracts for the sale and purchase of oil typical in a field or area require, or to pay MMS on the value that oil in such condition would realize. * * *
>
> We believe it is clear that it would not be reasonable for a producer of sour oil on the outer continental shelf to be required to sweeten oil simply because the pipeline in the area happens to be unwilling to transport any sour oil. Similarly, if oil is of a viscosity that allows it to be transported by truck, but which is too viscous to be transported by the local pipeline without blending, blending is not needed to put the oil in marketable condition. The oil is marketable in exactly the form it is in. It is acceptable to the party who will ultimately use it. * * *
>
> * * * * *
>
> [W]e strongly disagree with the proposal to require a lessee to meet the requirements of transportation contracts at no cost to the lessor. MMS has given no reasons for this proposed change and we believe that it is clear that the requirements of transportation contracts are different in kind from the requirements of sales contracts and that such costs are costs associated with transportation and should be deductible.

Another industry association opposes the proposed change to the definition of *marketable condition* because, in the association's view, it arbitrarily classifies certain deductible transportation costs as nondeductible costs of placing production in marketable condition. The third commenting industry association stated that it did not understand the proposed change.

MMS Response: The marketable condition rule has always required lessees to remove basic sediment and water to the level required for the relevant pipeline. There appears to be no controversy in this respect. It is not our intention to require a lessee to sweeten sour oil at its own expense simply because a particular pipeline does not accept sour oil and the marketable condition rule has never been interpreted to impose such a requirement.

MMS is not adopting the proposed change to the definition of ''marketable condition'' in this final rule because it

is not necessary to do so, particularly in the context of crude oil production and sales. MMS will continue to use the existing definition, which is the same as the definition used in the Federal oil valuation rule. MMS continues to follow the marketable condition principle set out in *United States* v. *General Petroleum Corp.* of California, 73 F.Supp. 225, aff'd, *Continental Oil Co.* v. *United States,* 184 F.2d 802 (9th Cir. 1950).

This final rule eliminates the definitions of the terms *load oil, minimum royalty, net profit share, oil shale,* and *tar sands* because none of those terms is used either in the existing regulations governing Indian oil valuation at §§ 206.51 through 206.55 or in this final rule. This final rule also deletes the last sentence of the existing definition of *oil,* because neither the existing § 206.51 definition nor this final rule refers to or uses the term *tar sands.*

This final rule also eliminates the definitions of *marketing affiliate, net-back method,* and *posted price* because the regulations no longer contain those terms.

This final rule retains the definition of *selling arrangement* in the existing § 206.51, which the 2006 Indian Oil Proposed Rule would have eliminated, because the transportation allowance provisions of the existing regulations at § 206.55 are not changed in this final rule, as explained below. Those provisions use the term *selling arrangement.* The MMS recognizes that payors no longer report royalties or allowances by selling arrangement. The MMS published the 2006 Reporting Amendments Proposed Rule that would amend the transportation allowance rules and eliminate that term. However, a final rule has not been published. Therefore, MMS has not eliminated the term *selling arrangement* in this final rule.

B. General Valuation Approach

The 2006 Indian Oil Proposed Rule first analyzed where oil is produced from Indian leases and how it is marketed. Among other things, the discussion in the preamble to the 2006 Indian Oil Proposed Rule noted that the overwhelming majority of crude oil produced from Indian leases is reported as being sold at arm's length at the lease. There are relatively few non-arm's-length dispositions of oil reported and only one situation in which the lessee or its affiliate refines oil produced from the lessee's leases. In all other instances, it appears that oil is sold at arm's length at some point before it is refined. There are also very few instances in which lessees are reporting transportation allowances. At the present time, only two lessees of Indian leases are reporting transportation allowances for crude oil. One of those involves a non-arm's-length transportation arrangement. Currently, one of the major producing tribes takes more than 90 percent of its royalty oil in-kind.

In addition, Indian tribal and allotted leases are distributed geographically much differently than Federal leases, and oil produced from Indian leases is marketed much differently than oil produced from Federal leases. Except for the possibility of some oil sold in Oklahoma, which accounts for only about 10 percent of the oil sold from Indian leases, oil produced from Indian leases apparently does not flow to, and is not exchanged to, Cushing, Oklahoma, where New York Mercantile Exchange (NYMEX) prices are published. Thus, with the exception of Oklahoma and possibly one type of oil produced in Wyoming, it is extremely difficult to obtain reliable location and quality differentials between Cushing and areas where the large majority of the oil is produced from Indian leases, including the San Juan Basin, northeastern Utah, Wyoming (for other oil types), and Montana. Even in Oklahoma, almost all the oil sold from Indian leases is reported to MMS as sold at arm's length.

In light of these facts, and in contrast to the earlier 1998 Indian Oil Proposed Rule Comment Period Extension and the 2000 Indian Oil Supplementary Proposed Rule, in the 2006 Indian Oil Proposed Rule, MMS proposed not to use either NYMEX or spot market index pricing as primary measures of value for oil produced from Indian leases. Because of the environment in which Indian oil is produced and marketed, MMS proposed in the 2006 Indian Oil Proposed Rule to value oil at the gross proceeds the lessee or its affiliate receives in an arm's-length sale. In the event a lessee first transfers its oil to an affiliate and the oil is sold at arm's length before being refined, MMS proposed to use the arm's-length sale by the affiliate as the basis for royalty valuation. In addition to the fact that the first arm's-length sale is the best measure of the value of the oil, the proposed approach also would resolve the issue created by the DC Circuit's interpretation of the gross proceeds rule and the term lessee in the Federal gas royalty valuation rules in *Fina Oil and Chemical Corp.* v. *Norton, supra.*

In the rare situations in which the sale occurs away from the lease, the 2006 Indian Oil Proposed Rule provided for transportation allowances. The MMS also proposed to specify that if a lessee sells oil produced from a lease under multiple arm's-length contracts instead of just one contract, the value of the oil would be the volume-weighted average of the total consideration for all contracts for the sale of oil produced from that lease.

Further, in the event that the lessee or its affiliate enters into one or more arm's-length exchanges, and, if the lessee or its affiliate ultimately sells the oil received in exchange, the value would be the gross proceeds for the oil received in exchange, adjusted for location and quality differentials derived from the exchange agreement(s). If the lessee exchanges oil produced from Indian leases to Cushing, Oklahoma, value would be the NYMEX price, adjusted for location and quality differentials derived from the exchange agreements. If the lessee does not ultimately sell the oil received in exchange and does not exchange oil to Cushing, the lessee must ask MMS to establish a value based on relevant matters.

Finally, if the lessee transports the oil produced from the lease to its own or its affiliate's refinery, the 2006 Indian Oil Proposed Rule would require the lessee to value the oil at the volume-weighted average of the gross proceeds paid or received by the lessee or its affiliate, including the refining affiliate, for purchases and sales under arm's-length contracts of other like-quality oil produced from the same field (or the same area if the lessee does not have sufficient arm's-length purchases and sales from the field) during the production month, adjusted for transportation costs. If the lessee purchases oil away from the field(s) and if it cannot calculate a price in the field(s) because it cannot determine the seller's cost of transportation, it would not include those purchases in the weighted-average price calculation.

Comment: The principal comment received regarding the general valuation approach described above was from an Indian tribe. The tribe would prefer that MMS adopt the 2000 Indian Oil Supplementary Proposed Rule that MMS withdrew in February 2005 in the 2005 Establishing Oil Value for Royalty Due on Indian Leases—Workshop **Federal Register** notice. Failing that, the tribe would prefer that MMS continue to value its oil under the existing regulations at §§ 206.50 through 206.55. The tribe's comments focus on the unreliability of posted prices and the consequent prior proposals to look to NYMEX or spot market index values. The tribe argued that ''MMS does not describe the 'environment' that it

believes justifies continuing its gross proceeds/posted prices methodology. It provides absolutely no findings of how the environment has changed from the year 2000 to the present year, and how this change justifies its policy reversal.'' The tribe further asks, ''Why does MMS cite a high percentage of arm's-length transactions as a justification for never using market pricing benchmarks?'' None of the industry commenters expressed any objection to using the gross proceeds derived from the affiliate's arm's-length resale as the measure of value if the lessee first transfers oil to an affiliate.

MMS Response: The MMS agrees that posted prices are not a reliable measure of value in the current market environment. Contrary to these comments, the 2006 Indian Oil Proposed Rule does not rely on posted prices. Whether a sales price happens to be established with reference to a posted price in any particular case is irrelevant if the contract was negotiated at arm's length. The 2006 Indian Oil Proposed Rule would not establish value with reference to posted prices independent of actual gross proceeds. The tribe appears to object to using arm's-length gross proceeds if the price set in an arm's-length contract happens to refer to or be based on a posted price. However, it does not explain why the negotiated arm's-length gross proceeds derived by a lessee or its affiliate is an improper or insufficient measure of value.

Further, the tribe's apparent preference for use of NYMEX or spot market index prices overlooks the fact that oil produced from Indian leases in the San Juan Basin is not generally transported or exchanged to Cushing, Oklahoma, or to another market center with an established spot market price. The tribe's comments thus overlook the consequent difficulty in determining reliable location and quality differentials that would be essential in using NYMEX or spot market index prices as a basis for valuation.

Comment: With respect to oil that is exchanged for other oil under exchange agreements, the tribe commented:

> Under the law [i.e., the 1988 rules], the Nation's royalty is to be a share of the gross proceeds from the sale of oil from Navajo leases. In the 1988 Rule, MMS determined that the value of tribal oil for royalty purposes could reasonably be calculated using a company's actual gross proceeds based on posted prices. * * * Instead the companies entered into elaborate transfer and exchange agreements with affiliates, which allowed the companies to sell oil produced from Navajo leases for prices that were significantly higher than a company's posted price * * * the Nation's royalty share did not reflect the premium prices the companies received for Navajo oil.

The tribe further comments:

> Simply put, MMS has forgotten why it sought to amend its valuation policies beginning with its draft rule in 1997. And those reasons are as valid today as they were in 1997: To eliminate the practices of the oil and gas industry to undervalue production through artificially posted prices for oil at the wellhead, when oil is actually exchanged/transferred and/or valued at other locations to the benefit of oil companies.

MMS Response: The 2006 Indian Oil Proposed Rule addresses the commenter's concern regarding exchange agreements. Under the proposed rule, any ''premium'' realized through an arm's-length exchange would be captured in the royalty value because value would be based on the gross proceeds derived from an arm's-length sale of the oil received in exchange (unless the oil is exchanged to Cushing, Oklahoma). If oil is first exchanged not at arm's length, i.e., with an affiliate, the proposed rule would require valuing the oil on the basis of the affiliate's arm's-length resale price in any event.

Comment: One industry association said that it ''supports the use of comparable purchases and sales from the same field or area in the situation where the lessee refines its own oil, and the exclusion of off-lease purchases that cannot be normalized.''

MMS Response: No commenter expressed objections to using the volume-weighted average of the gross proceeds paid or received by the lessee or its affiliate, including the refining affiliate, for purchases and sales under arm's-length contracts of other like-quality oil produced from the same field or area, adjusted for transportation costs, if the lessee or the lessee's affiliate refines the lessee's oil.

This final rule therefore adopts the 2006 Indian Oil Proposed Rule approach to replace the ''benchmarks'' currently outlined at § 206.52(c) for valuing oil not sold at arm's length. If such oil is sold before being refined, value will be based on the affiliate's arm's-length resale price. If the lessee or its affiliate refines the oil without an arm's-length sale, value will be based on the volume-weighted average of the gross proceeds paid or received for arm's-length purchases and sales of other like-quality oil produced from the same field or area.

Further, by adopting the proposed provisions for valuing production disposed of through arm's-length exchange agreements, this final rule ensures that any ''premium'' realized in the sale of oil received in exchange will be included in the royalty value. This final rule therefore addresses the tribe's comment that MMS should ''close a loophole that allows the oil companies to circumvent congressional intent and MMS's rules.''

C. Major Portion Valuation

The 2006 Indian Oil Proposed Rule would have made a number of changes to the major portion valuation provisions of the rule. The proposed rule would have used values reported on Form MMS–2014 for arm's-length sales (and affiliate's arm's-length resales) of Indian oil, and values reported for oil taken in kind, produced from a designated area that MMS would identify. Values reported for oil that is refined without being sold at arm's length would not have been included in the calculation. The proposed rule would not have changed the percentile at which the major portion value is determined, i.e., the 50th percentile by volume plus one barrel of oil.

Under the 2006 Indian Oil Proposed Rule, to normalize reported values for each oil type produced from the designated area to a common quality basis, MMS would have adjusted for API gravity using applicable posted price gravity adjustment tables. The MMS would have calculated separate major portion values for different oil types because the lease provision expressly refers to ''like-quality'' oil. The MMS would have designated oil types that are produced from each designated area.

To obtain the information necessary to make these calculations and adjustments, the 2006 Indian Oil Proposed Rule would have required the royalty payors to report API gravity and oil type on Form MMS–2014. The MMS then would have arrayed the normalized and adjusted (for transportation costs) values in order from the highest to the lowest, together with the corresponding volumes reported at those values. The major portion value would be the normalized and adjusted price in the array that corresponds to the 50th percentile by volume plus one barrel of oil, starting from the bottom.

Under the 2006 Indian Oil Proposed Rule, lessees initially would have reported on Form MMS–2014 the value of production at the value determined under the other provisions of the rule and would pay royalty on that value. The MMS then would have calculated the major portion values and notified lessees of the major portion values by publishing a notice in the **Federal Register** and making them available on the MMS Web site, together with the normalized gravity and the adjustment

tables. The lessee then would have compared the major portion value to the value initially reported on Form MMS–2014, normalized and adjusted for gravity and transportation. If the major portion value were higher than the value initially reported, normalized and adjusted for gravity and transportation, the lessee would have had to submit an amended Form MMS–2014, reporting the value as the major portion value, and pay any additional royalty owed.

Comments: The majority of the comments MMS received on the 2006 Indian Oil Proposed Rule addressed the major portion issue. Both of the Indian tribal commenters and all the industry commenters opposed the proposed changes, but for different reasons.

In general, the tribal commenters believed that the percentile at which the major portion should be measured should be consistent with the Indian gas royalty valuation provisions (i.e., the 25th percentile starting from the top of the array, rather than the 50th percentile plus one unit of production starting from the bottom of the array). The tribal commenters also argued that the major portion calculation should not be limited to Indian leases in a ''designated area.'' One tribal commenter argued that MMS should retain the existing reference to a ''field,'' and include all Indian, Federal, state, and private leases that may be within the field. The other tribal commenter argued that the calculation either should be expanded to include at least Federal leases outside the designated area or that the designated area should be expanded to include Federal leases in the area. The tribal commenters supported the concept of normalizing oil prices to a uniform quality before calculating the major portion value.

Industry commenters vigorously opposed the proposed requirements to report oil gravity and type. They also opposed any expansion of a designated area to include Federal leases, particularly because the requirement to report oil gravity and type would extend to those Federal leases identified as being within a designated area. The industry commenters asserted that the systems changes that these requirements would necessitate, including both programming changes and the development of different reporting systems for Federal and Indian leases, would be prohibitively expensive and out of proportion to any difference in royalty value that might result. One industry association also argued that including Federal leases in the major portion calculation would result in application to those Federal leases certain records retention requirements that now apply only to Indian leases, causing further disruptions to lessees' recordkeeping and systems operations. Industry commenters agreed with retaining the 50th percentile by volume plus one barrel of oil as the measure of what constitutes the major portion and opposed any suggestion to change that measure to a higher level.

MMS Response: There appears to be almost no issue regarding major portion valuation on which the tribal and industry commenters agree, and none of the commenters support the major portion provisions of the proposed rule. As a consequence, MMS has decided not to promulgate any amendment to the current major portion provisions at the existing § 206.52(a)(2) in this final rule and to convene a negotiated rulemaking committee to consider all aspects of major portion valuation.

Because of the way the amended valuation provisions for arm's-length sales and non-arm's-length dispositions are codified, paragraphs (a)(2)(i) and (ii) of the existing § 206.52 are redesignated in this final rule as a new § 206.54(a) and (b).

D. Transportation Allowances

The MMS made several proposals regarding transportation allowances in the 2006 Indian Oil Proposed Rule. If the transportation arrangement is at arm's length, the proposed rule would incorporate the provisions of the 2000 Federal Oil Final Rule, as amended in 2004, in calculating that allowance. That allowance is based on the actual cost paid to an unaffiliated transportation provider. For arm's-length transportation allowances, MMS also proposed to eliminate the requirement at § 206.55(c)(1), to file Form MMS–4110, Oil Transportation Allowance Report. Instead of Form MMS–4110, the lessee would have to submit copies of its transportation contract(s) and any amendments thereto within 2 months after the lessee reported the transportation allowance on Form MMS–2014. This proposed change mirrors the elimination of the requirement to file the analogous Form MMS–4295 for arm's-length transportation allowances under the 1999 Indian Gas Final Rule.

For non-arm's-length transportation arrangements, the lessee would have to calculate its actual costs. Under the 2006 Indian Oil Proposed Rule, Form MMS–4110 would still be required, but the requirement to submit a Form MMS–4110 in advance with estimated information would be eliminated. Instead, the lessee would submit the actual cost information to support the allowance on Form MMS–4110 within 3 months after the end of the 12-month period to which the allowance applies. This proposal also mirrors the change made in the 1999 Indian Gas Final Rule at § 206.178(b)(1)(ii).

The MMS also proposed that the non-arm's-length allowance calculation, and the costs that would be allowable and non-allowable under the non-arm's-length transportation allowance provisions, be revised to incorporate the provisions of the 2004 Federal Oil Final Rule.

The 2000 Federal Oil Final Rule provides that the lessee must base its transportation allowance in a non-arm's-length or no-contract situation, on the lessee's actual costs. These include (1) operating and maintenance expenses; (2) overhead; (3) depreciation; (4) a return on undepreciated capital investment; and (5) a return on 10 percent of total capital investment once the transportation system has been depreciated below 10 percent of total capital investment (§ 206.111(b)). The MMS proposed to incorporate the same cost allowance structure into the 2006 Indian Oil Proposed Rule, as discussed in more detail below.

Before June 1, 2000, the regulations for Federal oil valuation provided (as do current Indian oil valuation regulations) that, in the case of transportation facilities placed in service after March 1, 1988, actual costs could include either depreciation and a return on undepreciated capital investment or a cost equal to the initial investment in the transportation system multiplied by the allowed rate of return. The regulations before June 1, 2000, did not provide for a return on 10 percent of total capital investment once the system has been depreciated below 10 percent of total capital investment. The 2000 Federal Oil Final Rule eliminated the alternative of a cost equal to the initial investment in the transportation system multiplied by the allowed rate of return because it became unnecessary in view of the other changes made in the rule and because it had been used in very few, if any, situations.

The 2000 Federal Oil Final Rule also set forth the basis for the depreciation schedule to be used in the depreciation calculation. See § 206.111(h). The MMS proposed to adopt identical provisions for this rule through incorporation, except that the relevant date would have been the effective date of a final rule that adopted those provisions.

In the 2000 Federal Oil Final Rule, the depreciation schedule for a transportation system depended on whether the lessee owned the system on, or acquired the system after, the effective date of the final rule. The MMS

proposed to apply the same principle in the context of Indian leases.

Finally, the 2004 Federal Oil Final Rule, which amended § 206.111(i)(2), changed the allowed rate of return used in the non-arm's-length actual cost calculations from the Standard & Poor's BBB bond rate to 1.3 times the BBB bond rate. In March 2005, MMS promulgated an identical change to the allowed rate of return used in the calculation of actual costs under non-arm's-length transportation arrangements in the 2005 Federal Gas Final Rule, which amended § 206.157(b)(2)(v). The proposed change to this rule would incorporate this same change, for the same reasons the rate of return was changed in the 2004 Federal Oil Final Rule and 2005 Federal Gas Final Rules (i.e., 1.3 times the BBB bond rate more accurately reflects the lessees' cost of capital).

Comments: One of the two tribal commenters offered specific comments on the transportation allowance provisions of the proposed rule. The tribe expressed concern ''that the MMS would ultimately apply transportation allowance criteria established for Federal leases upon Indian leases, without due consideration for certain Indian lease provisions and policies.'' However, the tribe did not explain which cost elements it believed to be improper and did not identify any difference in relevant lease terms between Indian and Federal leases. The tribe opposes eliminating the Form MMS–4110 filing requirement. The tribe ''believes that Indian lessors should and must receive prior notification of all allowance deductions from its [sic] royalty and, if MMS is correct in that transportation allowances are limited for Indian leases, then it should not be burdensome for the few royalty reporters to continue to submit Form MMS–4110.'' The tribe opposes changing rate of return used in calculating actual transportation costs under non-arm's-length transportation arrangements and wants MMS to retain the BBB rate in the existing rule at § 206.55(v).

The other tribal commenter appears to oppose the transportation allowance provisions as part of its general opposition to the entire proposed rule.

One of the industry association commenters supports using the same transportation cost elements for Indian and Federal leases. The commenter agrees with the proposed elimination of Form MMS–4110 and supports the proposed change in the rate of return used in calculating actual transportation costs to 1.3 times the BBB bond rate. However, the commenter expresses concerns about the accessibility of that rate and wants MMS to post the rate.

Another industry association commenter says that there is no reason to treat oil pipeline costs differently depending on lessor ownership. That commenter also supports changing the rate of return to 1.3 times the BBB bond rate for the same reason that the rate was changed in the 2004 Federal Oil Final Rule and 2005 Federal Gas Final Rule. This commenter further suggests (presumably referring to non-arm's-length situations) that reporting actual transportation costs in the production month in which they occur is burdensome. The commenter notes that the Royalty Reporting Subcommittee of the Royalty Policy Committee (an MMS advisory committee) developed several options for making prior-period adjustments, but none of the options were adopted because the stakeholders couldn't reach consensus. This commenter also supports eliminating the requirement to pre-file Form MMS–4110 for non-arm's-length transportation arrangements and eliminating any form filing for arm's-length transportation arrangements. The commenter also opposes having to file arm's-length transportation contracts and amendments with MMS as unnecessarily burdensome because lessees have to retain those documents and provide them on request in any event.

MMS Response: At the present, lessees are reporting only three transportation allowances on Indian leases. Two are arm's-length transportation arrangements on certain Ute tribal leases and the other is a non-arm's-length transportation arrangement for production from certain Shoshone and Arapaho leases on the Wind River Reservation.

The issues involved in the proposed amendments to the transportation allowance provisions are difficult and have generated an unusual degree of controversy relative to the very limited number of transactions to which they apply. The MMS believes that further analysis of these questions is appropriate and has decided to reserve the transportation allowance issue for a possible future supplemental final rulemaking. If MMS decides to seek further comment on the transportation allowance provisions of the proposed rule, it will publish an appropriate notice.

In view of the change to the structure of the codified sections of the rule resulting from the changes to the valuation provisions, the existing transportation allowance rules (§§ 206.54 and 206.55 of the existing rule) are redesignated in this final rule as §§ 206.56 and 206.57. Certain conforming amendments are also made to correct cross-references to other sections. Otherwise, the existing rules remain unchanged.

E. Other Issues

In proposed § 206.50, MMS proposed adding a provision that, if the regulations are inconsistent with a Federal statute, a settlement agreement or written agreement, or an express provision of a lease, then the statute, settlement agreement, written agreement, or lease provision would govern to the extent of the inconsistency. A ''written agreement'' would mean a written agreement between the lessee and the MMS Director, and approved by the tribal lessor for tribal leases, establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under the regulations. The MMS received no comments opposed to this provision, and this final rule adopts it.

Regarding records retention, the proposed rule explained that proposed § 206.64 is adapted from § 206.105, and that the time for which records must be maintained is governed by § 103(b) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1713(b), as originally enacted. That requirement is not affected by the change in 30 U.S.C. 1724(f), which was enacted as part of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 and applies only to Federal leases. The referenced regulations in proposed § 206.64 reflect this difference. The MMS received no comments opposed to this provision, and this final rule adopts it.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

There will be no additional administrative costs/savings or royalty impacts as a result of this final rule. There will be no change in royalties or administrative burdens to industry, state and local governments, Indian tribes, individual Indian mineral owners, or the Federal Government.

All administrative costs/savings and royalty impacts listed in the 2006 Indian Oil Proposed Rule were the result of the proposed major portion provision, the additional information collection required by that provision, and the transportation allowance provision. The majority of the costs under the 2006 Indian Oil Proposed Rule were

associated with the proposed major portion provision. Neither the proposed major portion provision nor the proposed transportation allowance provision is adopted under this final rule. As a result, the existing provisions at § 206.50 through 206.55 will be retained. In Section II, Comments on the Proposed Rule, MMS explains plans to convene a negotiated rulemaking committee that will make recommendations regarding the implementation of the major portion provision found in most Indian tribal and allotted leases. Also, under Section II D, Transportation Allowance, MMS is reserving the transportation allowances issues for a possible future supplemental final rulemaking.

There are no administrative costs and royalty impacts of this final rule to industry, state and local governments, Indian tribes and individual Indian mineral owners, or the Federal Government.

2. Regulatory Planning and Review, Executive Order 12866

This final rule is not a significant regulatory action. However, in view of the subject matter of the regulation, the Office of Management and Budget has reviewed this rule under Executive Order 12866.

1. This rule will not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–800–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule:

1. Will not have an annual effect on the economy of $100 million or more.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, Indian, or local government agencies, or geographic regions.

3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This final rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This final rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a significant regulatory action under the Unfunded Mandates Reform Act. An analysis was prepared for the 2006 Indian Oil Proposed Rule; however, because certain provisions of the proposed rule were not adopted under this final rule, there are no apparent cost and royalty impacts to industry, state and local governments, Indian tribes and individual Indian mineral owners, and the Federal Government. Therefore, an analysis for this final rule was not necessary under Executive Order 12866. See Section III, Procedural Matters, Summary Cost and Royalty Impact Data.

6. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this final rule will not have significant takings implications. A takings implication assessment is not required.

7. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this final rule will not have significant federalism implications. A federalism assessment is not required. It will not substantially and directly affect the relationship between Federal and state governments. The management of Indian leases is the responsibility of the Secretary of the Interior, and all royalties collected from Indian leases are distributed to tribes and individual Indian mineral owners. This final rule will not alter that relationship.

8. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

9. Paperwork Reduction Act of 1995 (PRA)

Based on comments received on the proposed rule, MMS is not revising major portion provisions in the current regulations at 30 CFR 206.50 through 206.55. We have deleted from the final rule all proposed changes to the major portion provisions. We also have revised sections in the proposed rule containing changes to transportation allowances that would have necessitated additional information collections.

During the proposed rulemaking stage, we submitted an information collection request to OMB; OMB did not approve the collection at that time. Because there are no longer any new information collection requirements in the final rule, no further submission to OMB is required. Any information collections remaining in the rulemaking have already been approved under the following OMB Control Numbers:

- 1010–0103 regarding the MMS Indian oil and gas program—current burden hours are 1,276 (expires June 30, 2009); and
- 1010–0140 regarding MMS's primary financial form, the Form MMS–2014, Report of Sales and Royalty Remittance—current burden hours are 158,821 (expires November 30, 2009).

We received comments on the proposed changes to Form MMS–2014 and filing requirements. Commenters primarily objected to the cost of system changes that the proposed changes would have required. These comments are addressed in the preamble of this final rule, and none of the proposed changes are included in the final rulemaking.

The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

10. National Environmental Policy Act (NEPA)

This final rule deals with financial matters and has no direct effect on MMS decisions on environmental activities. Pursuant to 516 DM 2.3A (2), Section 1.10 of 516 DM 2, Appendix 1, excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process. None of the exceptions to the categorical exclusion applies.

11. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that the changes we are promulgating will not have any apparent impact on tribes and individual Indian mineral owners. During the writing of this final rule, we have consulted extensively with tribal representatives and individual Indian mineral owners regarding the regulatory changes affecting tribes and individual Indian mineral owners in this final rule. See Section I, Background, for additional information regarding public meetings and consultation with tribes and individual Indian mineral owners. Also see Section III, 13, below.

12. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation will not have a significant effect on the Nation's energy supply, distribution, or use. The changes better reflect the way industry accounts internally for its oil valuation and provides a number of technical clarifications. None of these changes will affect significantly the way industry does business and, accordingly, will not affect industry's approach to energy development or marketing. Nor will the rule otherwise impact energy supply, distribution, or use.

13. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

This final rule does not have tribal implications that will impose substantial direct compliance costs on Indian tribal governments. In accordance with Executive Order 13175, and with the Department's policy to consult with individual Indian mineral owners on all policy changes that may affect them, MMS scheduled public meetings in three different locations, announced in the 2005 Establishing Oil Value for Royalty Due on Federal Leases—Workshop, for the purpose of consulting with Indian tribes and individual Indian mineral owners and to obtain public comments from other interested parties. The public meetings were held on March 8, 2005, in Oklahoma City, Oklahoma; on March 9, 2005, in Albuquerque, New Mexico; and on March 16, 2005, in Billings, Montana. The MMS also held five additional consultation sessions with tribes and individual Indian mineral owners to hear and discuss comments, including sessions in Window Rock, Arizona, on June 7, 2005; Fort Duchesne, Utah, on June 9, 2005; Fort Washakie, Wyoming, on June 15, 2005; Muskogee, Oklahoma, on June 16, 2005; and Anadarko, Oklahoma, on June 17, 2005.

14. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 204.200.

(5) What is the purpose of this part?

(6) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(7) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also
e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 30 CFR Part 206

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources.

Dated: November 27, 2007.

C. Stephen Allred,

Assistant Secretary for Land and Minerals Management.

■ For the reasons set forth in the preamble, MMS amends 30 CFR part 206 as follows:

PART 206—PRODUCT VALUATION

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

■ 2. The table of contents for Subpart B—Indian Oil is revised to read as follows:

Subpart B—Indian Oil

Sec.

206.50 What is the purpose of this subpart?
206.51 What definitions apply to this subpart?
206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?
206.53 How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract?
206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?
206.55 What are my responsibilities to place production into marketable condition and to market the production?
206.56 Transportation allowances—general.
206.57 Determination of transportation allowances.
206.58 What must I do if MMS finds that I have not properly determined value?
206.59 May I ask MMS for valuation guidance?
206.60 What are the quantity and quality bases for royalty settlement?
206.61 What records must I keep and produce?

206.62 Does MMS protect information I provide?

§§ 206.54 and 206.55 [Redesignated]

■ 3. Sections 206.54 and 206.55 are redesignated as §§ 206.56 and 206.57.

■ 4. In redesignated § 206.56, the reference to ''Section 206.52'' in paragraph (a) and the reference to ''§ 206.52'' in paragraph (b)(1) are revised to read ''§ 206.52 or § 206.53.'' The reference to ''§ 206.55'' in paragraph (c) is revised to read ''§ 206.57.''

■ 5. Sections 206.50 through 206.53 are revised, and §§ 206.54 and 206.55 are added, to read as follows:

§ 206.50 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). This subpart does not apply to Federal leases, including Federal leases for which revenues are shared with Alaska Native Corporations. This subpart:

(1) Establishes the value of production for royalty purposes consistent with the Indian mineral leasing laws, other applicable laws, and lease terms;

(2) Explains how you as a lessee must calculate the value of production for royalty purposes consistent with applicable statutes and lease terms; and

(3) Is intended to ensure that the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing Indian mineral leasing laws, treaties, and lease terms.

(b) If the regulations in this subpart are inconsistent with a Federal statute, a settlement agreement or written agreement as these terms are defined in this paragraph, or an express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency. For purposes of this paragraph:

(1) *Settlement agreement* means a settlement agreement that is between the United States and a lessee, or between an individual Indian mineral owner and a lessee and is approved by the United States, resulting from administrative or judicial litigation; and

(2) *Written agreement* means a written agreement between the lessee and the MMS Director (and approved by the tribal lessor for tribal leases) establishing a method to determine the value of production from any lease that MMS expects at least would approximate the value established under this subpart.

(c) The MMS or Indian tribes may audit, or perform other compliance reviews, and require a lessee to adjust royalty payments and reports.

§ 206.51 What definitions apply to this subpart?

For purposes of this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person.

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control in a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership:

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Indian leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (generally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location, and other consideration. Exchange agreements:

(1) May or may not specify prices for the oil involved;

(2) Frequently specify dollar amounts reflecting location, quality, or other differentials;

(3) Include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement, or in separate agreements; and

(4) May include, but are not limited to, exchanges of produced oil for specific types of oil (e.g., WTI); exchanges of produced oil for other oil at other locations (location trades); exchanges of produced oil for other grades of oil (grade trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields usually are given names, and their official boundaries are often designated by oil and gas regulatory agencies in the respective states in which the fields are located.

Gathering means the movement of lease production to a central accumulation or treatment point on the

lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM operations personnel.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services, such as dehydration, marketing, measurement, or gathering that the lessee must perform at no cost to the lessor in order to put the production into marketable condition;

(2) The value of services to put the production into marketable condition, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Indian royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating those payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any minerals or interest in minerals is held in trust by the United States or that is subject to Federal restriction against alienation.

Individual Indian mineral owner means any Indian for whom minerals or an interest in minerals is held in trust by the United States or who holds title subject to Federal restriction against alienation.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under an Indian mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products. Depending on the context, lease may also refer to the land area covered by that authorization.

Lease products means any leased minerals attributable to, originating from, or allocated to Indian leases.

Lessee means any person to whom the United States, a tribe, or individual Indian mineral owner issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. Lessee includes:

(1) Any person who has an interest in a lease (including operating rights owners); and

(2) An operator, purchaser, or other person with no lease interest who makes royalty payments to MMS or the lessor on the lessee's behalf

Lessor means an Indian tribe or individual Indian mineral owner who has entered into a lease.

Like-quality oil means oil that has similar chemical and physical characteristics.

Location differential means an amount paid or received (whether in money or in barrels of oil) under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

MMS means the Minerals Management Service of the Department of the Interior.

Net means to reduce the reported sales value to account for transportation instead of reporting a transportation allowance as a separate entry on Form MMS–2014.

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settlement prices for light sweet oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the nearest month of delivery for which NYMEX futures prices are published corresponding to each such day; and

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil.

Operating rights owner, also known as a working interest owner, means any person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease until the operating rights have been transferred from record title (see Bureau of Land Management regulations at 43 CFR 3100.0–5(d)).

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes that normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Quality differential means an amount paid or received under an exchange agreement (whether in money or in barrels of oil) that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in the *MMS Oil and Gas Payor Handbook, Volume III—Product Valuation.*

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

WTI means West Texas Intermediate.

You means a lessee, operator, or other person who pays royalties under this subpart.

§ 206.52 How do I calculate royalty value for oil that I or my affiliate sell(s) or exchange(s) under an arm's-length contract?

(a) The value of oil under this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under §§ 206.56 and 206.57. If the arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, you must value the oil sold as the total consideration accruing to the seller. Use this section to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you have multiple arm's-length contracts to sell oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the volume-weighted average of the total consideration established under this section for all contracts for the sale of oil produced from that lease.

(c) If MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(1) Misconduct by or between the parties to the arm's-length contract; or

(2) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, MMS will establish a value based on other relevant matters.

(i) The MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(ii) The fact that the price received by the seller under an arm's-length contract is less than other measures of market price is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil produced from the lease.

(d) You must base value on the highest price that the seller can receive through legally enforceable claims under the oil sales contract. If the seller fails to take proper or timely action to receive prices or benefits to which it is entitled, you must base value on that obtainable price or benefit.

(1) In some cases the seller may apply timely for a price increase or benefit allowed under the oil sales contract, but the purchaser refuses the seller's request. If this occurs, and the seller takes reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits. This paragraph (d)(1) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(2) Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

(e) If you or your affiliate enter(s) into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, then you must value your oil under this paragraph.

(1) If you or your affiliate exchange(s) oil at arm's length for WTI or equivalent oil at Cushing, Oklahoma, you must value the oil using the NYMEX price, adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under paragraph (e)(4) of this section and §§ 206.56 and 206.57.

(2) If you do not exchange oil for WTI or equivalent oil at Cushing, but exchange it at arm's length for oil at another location and following the arm's-length exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you must use the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s), adjusted for applicable location and quality differentials under paragraph (e)(3) of this section and any transportation costs under paragraph (e)(4) of this section and §§ 206.56 and 206.57.

(3) You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any exchange agreement does not reflect reasonable location or quality differentials, MMS may adjust the differentials you used based on relevant information. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(4) If you value oil under this paragraph, MMS will allow a deduction, under §§ 206.56 and 206.57, for the reasonable, actual costs to transport the oil:

(i) From the lease to a point where oil is given in exchange; and

(ii) If oil is not exchanged to Cushing, Oklahoma, from the point where oil is received in exchange to the point where the oil received in exchange is sold.

(5) If you or your affiliate exchange(s) your oil at arm's length, and neither paragraph (e)(1) nor (e)(2) of this section applies, MMS will establish a value for the oil based on relevant matters. After MMS establishes the value, you must report and pay royalties and any late payment interest owed based on that value.

(f) You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(g) You must also comply with § 206.54.

§ 206.53 How do I determine value for oil that I or my affiliate do(es) not sell under an arm's-length contract?

(a) The unit value of your oil not sold under an arm's-length contract is the volume-weighted average of the gross proceeds paid or received by you or your affiliate, including your refining affiliate, for purchases or sales under arm's-length contracts.

(1) When calculating that unit value, use only purchases or sales of other like-quality oil produced from the field (or the same area if you do not have sufficient arm's-length purchases or sales of oil produced from the field) during the production month.

(2) You may adjust the gross proceeds determined under paragraph (a) of this section for transportation costs under paragraph (c) of this section and §§ 206.56 and 206.57 before including those proceeds in the volume-weighted average calculation.

(3) If you have purchases away from the field(s) and cannot calculate a price in the field because you cannot determine the seller's cost of transportation that would be allowed under paragraph (c) of this section and §§ 206.56 and 206.57, you must not include those purchases in your weighted-average calculation.

(b) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliate's arm's-length purchases or sales to the same gravity as that of the oil produced from the lease. Use applicable gravity adjustment tables for the field (or the same general area for like-quality oil if you do not have gravity adjustment tables for the specific field) to normalize for gravity.

Example to paragraph (b): 1. Assume that a lessee, who owns a refinery and refines the oil produced from the lease at that refinery, purchases like-quality oil from other producers in the same field at arm's length for use as feedstock in its refinery. Further assume that the oil produced from the lease that is being valued under this section is Wyoming general sour with an API gravity of 23.5°. Assume that the refinery purchases at arm's length oil (all of which must be

Wyoming general sour) in the following volumes of the API gravities stated at the prices and locations indicated:

10,000 bbl	24.5°	$34.70/bbl	Purchased in the field.
8,000 bbl	24.0°	34.00/bbl	Purchased at the refinery after the third-party producer transported it to the refinery, and the lessee does not know the transportation costs.
9,000 bbl	23.0°	33.25/bbl	Purchased in the field.
4,000 bbl	22.0°	33.00/bbl	Purchased in the field.

2. Because the lessee does not know the costs that the seller of the 8,000 bbl incurred to transport that volume to the refinery, that volume will not be included in the volume-weighted average price calculation. Further assume that the gravity adjustment scale provides for a deduction of $0.02 per 1/10 degree API gravity below 34°. Normalized to 23.5° (the gravity of the oil being valued under this section), the prices of each of the volumes that the refiner purchased that are included in the volume-weighted average calculation are as follows:

10,000 bbl	24.5°	$34.50	(1.0° difference over 23.5° = $0.20 deducted).
9,000 bbl	23.0°	33.35	(0.5° difference under 23.5° = $0.10 added).
4,000 bbl	22.0°	33.30	(1.5° difference under 23.5° = $0.30 added).

3. The volume-weighted average price is ((10,000 bbl × $34.50/bbl) + (9,000 bbl × $33.35/bbl) + (4,000 bbl × $33.30/bbl)) / 23,000 bbl = $33.84/bbl. That price will be the value of the oil produced from the lease and refined prior to an arm's-length sale, under this section.

(c) If you value oil under this section, MMS will allow a deduction, under §§ 206.56 and 206.57, for the reasonable, actual costs:

(1) That you incur to transport oil that you or your affiliate sell(s), which is included in the weighted-average price calculation, from the lease to the point where the oil is sold; and

(2) That the seller incurs to transport oil that you or your affiliate purchase(s), which is included in the weighted-average cost calculation, from the property where it is produced to the point where you or your affiliate purchase(s) it. You may not deduct any costs of gathering as part of a transportation deduction or allowance.

(d) If paragraphs (a) and (b) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(e) You must also comply with § 206.54.

§ 206.54 How do I fulfill the lease provision regarding valuing production on the basis of the major portion of like-quality oil?

(a) For any Indian leases that provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production, for royalty purposes, will be the higher of those two values.

(b) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent by volume plus one barrel of oil (starting from the bottom) is sold.

§ 206.55 What are my responsibilities to place production into marketable condition and to market the production?

You must place oil in marketable condition and market the oil for the mutual benefit of yourself and the Indian lessor at no cost to the lessor, unless the lease agreement provides otherwise. If, in the process of marketing the oil or placing it in marketable condition, your gross proceeds are reduced because services are performed on your behalf that would be your responsibility, and if you valued the oil using your or your affiliate's gross proceeds (or gross proceeds received in the sale of oil received in exchange) under § 206.52, you must increase value to the extent that your gross proceeds are reduced.

■ 6. Sections 206.58 through 206.62 are added to read as follows:

§ 206.58 What must I do if MMS finds that I have not properly determined value?

(a) If MMS finds that you have not properly determined value, you must:

(1) Pay the difference, if any, between the royalty payments you made and those that are due, based upon the value MMS establishes; and

(2) Pay interest on the difference computed under § 218.54 of this chapter.

(b) If you are entitled to a credit due to overpayment on Indian leases, see § 218.53 of this chapter. The credit will be without interest.

§ 206.59 May I ask MMS for valuation guidance?

You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. We will promptly review your proposal and provide you with non-binding guidance.

§ 206.60 What are the quantity and quality bases for royalty settlement?

(a) You must compute royalties on the quantity and quality of oil as measured at the point of settlement approved by BLM for the lease.

(b) If you determine the value of oil under §§ 206.52, 206.53, or 206.54 of this subpart based on a quantity or quality different from the quantity or quality at the point of royalty settlement approved by BLM for the lease, you must adjust the value for those quantity or quality differences.

(c) You may not deduct from the royalty volume or royalty value actual or theoretical losses incurred before the royalty settlement point unless BLM determines that any actual loss was unavoidable.

§ 206.61 What records must I keep and produce?

(a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the field or area. You must make this data available to MMS, Indian

representatives, or other authorized persons.

(b) You must retain all data relevant to the determination of royalty value. Document retention and recordkeeping requirements are found at §§ 207.5, 212.50, and 212.51 of this chapter. The MMS, Indian representatives, or other authorized persons may review and audit such data you possess, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart or the lease.

§ 206.62 Does MMS protect information I provide?

The MMS will keep confidential, to the extent allowed under applicable laws and regulations, any data or other information you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior, 43 CFR part 2.

[FR Doc. E7–24318 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–1128; FRL–8507–1]

Approval and Promulgation of Implementation Plans; Nebraska; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is revising the Nebraska State Implementation Plan (SIP) for the purpose of approving the Nebraska Department of Environmental Quality's (NDEQ) actions to address the ''good neighbor'' provisions of the Clean Air Act Section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another State's air quality through interstate transport. NDEQ has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, interference with plans in another state to prevent significant deterioration of air quality, and efforts of other states to protect visibility. The requirements for public notification were also met by NDEQ.

DATES: This direct final rule will be effective February 15, 2008, without further notice, unless EPA receives adverse comment by January 16, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–1128, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. E-mail: *jay.michael@epa.gov*.
3. Mail: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. Hand Delivery or Courier: Deliver your comments to Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–1128. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. 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.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460, or by e-mail at *jay.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is being addressed in this document?
What action is EPA taking?

What is being addressed in this document?

EPA is revising the SIP for the purpose of approving the NDEQ's actions to address the requirements of the Clean Air Act (CAA) section 110(a)(2)(D)(i). This section requires each state to submit a SIP that prohibits emissions that could adversely affect another state. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to downwind nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with provisions to prevent significant deterioration of air quality, and (4) interfere with efforts to protect visibility.

EPA issued guidance on August 15, 2006, relating to SIP submissions to meet the requirements of section 110(a)(2)(D)(i). As discussed below, Nebraska's analysis of its SIP with respect to the statutory requirements is consistent with the guidance.

The NDEQ has addressed the first two of these elements by submitting a technical demonstration supporting the conclusion that emissions from

Nebraska do not significantly contribute to downwind nonattainment or interfere with maintenance of the NAAQS in another state. For $PM_{2.5}$, the state has relied upon existing EPA Clean Air Interstate Rule (CAIR) modeling that determined impacts from the state do not meet or exceed the 0.2 μg/m³ average annual threshold that EPA established to determine significant impact on another state in the projection year 2010. The state indicated that in EPA's CAIR modeling, Nebraska's maximum downwind contribution to average annual nonattainment was 0.07 μg/m³ (70 FR 25247). The state has relied on this result to demonstrate that emissions from the state do not contribute significantly to downwind nonattainment of the annual $PM_{2.5}$ standard.

For 8-hour ozone, the state was unable to rely on EPA CAIR modeling to determine the state's impact on projected 8-hour ozone nonattainment in downwind states. The EPA CAIR 8-hour ozone modeling domain did not include the entire state. As a result, impacts from the state were not provided in the analysis. Therefore, the state has provided additional analysis, as part of the technical demonstration, to support a determination that the state does not contribute significantly to projected downwind 8-hour ozone nonattainment and maintenance in the year 2010.

The State's additional analysis includes a modeling demonstration that supports this conclusion. The modeling demonstration relies on the source apportionment technique, consistent with the technical analysis in support of CAIR, to evaluate the State's contribution to nearby downwind metropolitan statistical areas (MSAs) and nearby counties. These areas include Chicago and additional counties in Wisconsin along Lake Michigan, St. Louis, Kansas City, and Denver.

The determination of significance in the State's analysis was based upon three contribution factors as determined in CAIR:

- The magnitude of the contribution;
- The frequency of the contribution; and
- The relative amount of contribution.

The source apportionment modeling analysis yielded consistent results showing Nebraska does not contribute significantly to downwind 8-hour ozone nonattainment in any of the receptor counties analyzed. For example, Nebraska's contribution to total nonattainment in Chicago is 0.36%, with a contribution average of 0.3 ppb, and a 1.74% relative contribution during exceedance periods. By EPA's own metrics, these impacts are considered to be small and infrequent. Moreover, not a single metric of the three contribution factors was found to be above the significance threshold established by EPA for any of the downwind counties. (See Technical Support Document for the Final Clean Air Interstate Rule—Air Quality Modeling). Based on this information provided by the State, EPA believes the State has sufficiently demonstrated that emissions from the State do not significantly contribute to downwind nonattainment or interfere with maintenance of the NAAQs. Additional supporting information on Nebraska's modeling demonstration can be found in its technical support document provided in the docket.

The third element NDEQ addressed was prevention of significant deterioration (PSD). For 8-hour ozone, the state has met the obligation by confirming that major sources in the state are currently subject to PSD programs that implement the 8-hour ozone standard. For $PM_{2.5}$, the state has confirmed that the state's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM_{10} as a surrogate for $PM_{2.5}$ for the purposes of PSD review. Once $PM_{2.5}$ guidance is finalized by EPA, NDEQ commits to transitioning from use of the interim $PM_{2.5}$ guidance to the final $PM_{2.5}$ implementation guidance after approval of the $PM_{2.5}$ SIP revision. EPA proposed regulations to establish this guidance on September 21, 2007 (72 FR 54112).

It should be noted that Nebraska is currently designated with attainment for both the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards.

At this time, it is not possible for NDEQ to accurately determine whether there is interference with measures in another state's SIP designed to protect visibility, which is the fourth element that was addressed. Technical projects relating to visibility degradation are under development. Nebraska will be in a more advantageous position to address the visibility projection requirements once the initial regional haze SIP has been developed.

A public hearing with regard to this action was held by the state. No comments were received.

With this action, the non-regulatory text in 40 CFR 52.1420(e) is revised to reflect that NDEQ addressed the elements of the CAA section 110(a)(2)(D)(i) submittal.

What action is EPA taking?

EPA is approving this revision submitted by Nebraska and is revising 40 CFR 52.1420(e) to reflect that the NDEQ has adequately addressed the required elements of the CAA section 110(a)(2)(D)(i) SIP. Please note that if EPA receives adverse comments on part of this rule, and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the

CAA. This action 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 approves a state rule implementing a Federal standard.

In reviewing state 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 state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 29, 2007.

William Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart CC—Nebraska

■ 2. In § 52.1420(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.1420 Identification of Plan.

* * * * *

(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
* *	*	*	* *	*
(23) CAA 110(a)(2)(D)(i) SIP—Interstate Transport.	Statewide	5/18/07	12/17/07 [insert FR page number where the document begins].	

[FR Doc. E7–24231 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

[Docket No. FMCSA–2004–19608]

RIN–2126-AB14

Hours of Service of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule (IFR); request for comments.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations effective December 27 to allow commercial motor vehicle (CMV) drivers up to 11 hours of driving time within a 14-hour, non-extendable window from the start of the workday, following 10 consecutive hours off duty (11-hour limit). This interim rule also allows motor carriers and drivers to restart calculations of the weekly on-duty time limits after the driver has at least 34 consecutive hours off duty (34-hour restart). An IFR is necessary to prevent disruption to enforcement and compliance with the hours-of-service (HOS) rules when the stay expires, as well as possible effects on the timely delivery of essential goods and services. This IFR will ensure that a familiar and uniform set of national rules governs motor carrier transportation, while FMCSA gathers public comments on all aspects of this interim final rule, conducts peer review of our analysis, and considers the appropriate final rule that addresses the issues identified by the Court. FMCSA is fully committed to issuing a final rule in 2008.

DATES: This rule is effective December 27, 2007. Comments must be received on or before February 15, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2004–19608 by any of the following methods:

- *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New

Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., 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. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://docketsinfo.dot.gov*.

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Driver and Carrier Operations; or *MCPSD@dot.gov*. Telephone (202) 366–4325. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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A. Legal Basis for the Rulemaking
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G. Regulatory Analyses and Notices

A. Legal Basis for the Rulemaking

This rule is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and, (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)].

The hours-of-service (HOS) regulations adopted in this interim rule pertain directly to the ''maximum hours of service of employees of * * * a motor carrier [49 U.S.C. 31502(b)(1)] and the ''maximum hours of service of employees of * * * a motor private carrier'' [49 U.S.C. 31502(b)(2)]. The adoption and enforcement of such rules was specifically authorized by the Motor Carrier Act of 1935. This rule rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' Although this authority is very broad, the Act also includes specific requirements: ''At a minimum, the regulations shall ensure that (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' [49 U.S.C. 31136(a)].

This rule is based on the authority of the 1984 Act and addresses the specific mandates of 49 U.S.C. 31136(a)(2), (3), and (4). Section 31136(a)(1) of 49 U.S.C. deals almost entirely with the mechanical condition of commercial motor vehicles (CMVs), a subject not included in this rulemaking. The phrase ''operated safely'' in paragraph (a)(1) refers primarily to the safe operation of the vehicle's equipment, but to the extent it encompasses safe driving, this rule also addresses that mandate.

Before prescribing any regulations, the Federal Motor Carrier Safety Administration (FMCSA) must also consider their ''costs and benefits'' [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are also discussed in this interim rule.

B. Why This Interim Final Rule Is Necessary

After the United States Court of Appeals for the District of Columbia Circuit (the Court or D.C. Circuit) decision in *Owner-Operator Independent Drivers Association, Inc.* v. *Federal Motor Carrier Safety Administration*, 494 F.3d 188 (D.C. Cir. 2007), FMCSA carefully analyzed the current situation to determine the appropriate action to take in response to the decision. It is important to note that the D.C. Circuit found fault with various procedures related to the Agency's adoption of the 11-hour limit and the 34-hour restart, but not with their substance. This analysis included a review of the safety data concerning motor carrier operations, particularly with respect to fatigue-related fatal crashes. The discussion below further explains the analysis and reasoning that has led FMCSA to determine this IFR is necessary to ensure that a familiar and uniform set of national rules governs motor carrier transportation, while FMCSA gathers public comments and information and considers the appropriate final rule, which FMSCA is fully committed to issuing in 2008.

We found that the 2005 rule has maintained highway safety outcomes while enhancing operational flexibility for the motor carrier industry. Every alternative, including immediate restoration of a 10-hour driving limit with no 34-hour restart, entails a risk of disrupting that achievement. As mentioned above, in the years since 2003, when the 11-hour driving limit and 34-hour restart provision were adopted (along with the critically important 10-hour minimum daily off-duty period), there has been no upward trend in the number of fatal crashes as a whole or fatigue-related fatal crashes in particular. In fact, the 2006 fatality rate per 100 million vehicle miles traveled (VMT) by combination unit trucks (mostly standard tractor-trailer

combinations) is the lowest since the Department of Transportation began keeping such statistics over 30 years ago. The percentage of large truck fatal crashes where the driver was coded as fatigued has remained essentially the same since 2003, despite small fluctuations. Similarly, the percentage of large-truck fatalities in the 11th hour of driving where the driver was coded as fatigued has remained below the average of the years 1991–2002 since 2003. The D.C. Circuit found fault with various procedures related to the Agency's adoption of the 11-hour limit and the 34-hour restart, but not with their substance. These provisions are part of an effective safety rule and must be preserved while the Department addresses the issues identified by the Court.

We then examined the alternatives available to the Agency in light of the Court's decision and our statutory responsibilities. We believe, based on reading the Court's decision in conjunction with the current text of the regulation, that there is strong likelihood of confusion regarding what HOS rules will be in effect on December 27, 2007, when the Court's mandate issues. For example, drivers and motor carriers could read the Court's decision to vacate certain provisions of the 2005 HOS rule in light of 49 CFR 395.0 and conclude that there is no daily driving limit in effect. Alternatively, issuance of the Court's mandate could be viewed as an immediate restoration of the former 10-hour driving limit with no 34-hour restart. Regardless of how the Court's action is interpreted, we are certain that issuance of the mandate will lead to sufficient confusion and uncertainty concerning what HOS rules govern, and result in poor compliance by the motor carrier industry, as well as reduced and inconsistent enforcement by Federal and State officials. FMCSA provides grants to States that agree to adopt and enforce State laws or regulations compatible with the Federal safety regulations. Some adopt Federal rules by reference, while others require the legislature to enact a special measure adopting the Federal rule; many allow an administrative agency to adopt a rule, but only after publishing a notice and giving the public a chance to comment. Because of wide variations in adoption procedures and schedules, States have three years to adopt such regulations. In order to respond adequately to the Court's procedural concerns we believe that, to respond to the Court's decision, we need to issue an IFR, with an opportunity for public comment, to ensure there will not be a patchwork of laws across the nation—with some States enforcing a 10-hour limit while others enforce no limit, and still others retained the 2005 limits—without a clear general understanding of what Federal regulation is in place . Undoubtedly, this would create confusion, inconsistency, and have an unpredictable impact on safety, since law enforcement may reduce its enforcement as a result of varying State laws. To remain legal, each driver would need to know the HOS limits in each State where he or she operated; this is simply impractical. Drivers could not be sure how their actions in one State would be treated in a State with a different HOS regime; officers might reduce their enforcement efforts to avoid the perception of unfairness. Uncertainty is the enemy of enforcement and compliance; it can only impair highway safety. This IFR will ensure that a familiar, uniform set of national rules govern motor carrier transportation, while FMCSA gathers additional public comments on all aspects of this interim final rule, conducts peer review of our analysis, and considers an appropriate final rule that addresses the issues identified by the Court. FMCSA is fully committed to issuing a final rule in 2008.

Additionally, an immediate restoration of a 10-hour driving limit with no restart provision or entirely eliminating the daily driving limit would cause disruption and transition costs. The affidavits of motor carrier officials filed by American Trucking Associations, Inc. (ATA) in support of its stay motion in the D.C. Circuit (and described in more detail below) bear witness to the recruitment, training, operational, and equipment costs motor carriers would face, amounting in the aggregate to scores and perhaps hundreds of millions of dollars. The costs are not merely transitional, however. Our failure to issue an IFR could inflict a loss of scheduling flexibility on the industry and ultimately raise the cost of highway transportation. There could also be adverse safety implications, as new and inexperienced drivers are hired to handle loads that could not consistently be delivered in the absence of the provisions vacated by the Court. New drivers are less safe than veteran operators and would inevitably become involved in crashes that a more experienced driver population would avoid. The costs of added crashes are very substantial. The IFR avoids all of these problems.

The IFR will also allow FMCSA and commenters to the docket additional time to evaluate more recent data and determine the appropriate final hours of service rule while avoiding shifting the requirements back and forth. Although our analysis indicates these policies are the right ones to adopt on an interim basis, FMCSA specifically requests comment on all the conclusions reached in this preamble and Regulatory Impact Analysis (RIA). FMCSA is also submitting its analysis to peer review. FMCSA is committed to issuing in 2008 a final rule fully responding to all comments to this IFR.

For example, with respect to the 11-hour driving limit and the 34-hour restart, the more recent data continue to support them. Although the D.C. Circuit raised concerns with the Agency's treatment of the Trucks Involved in Fatal Accidents (TIFA) data for crashes that occurred beyond the 11th hour in the 2005 rule, the Agency has employed a more sophisticated analysis discussed below that shows a lower risk from driving in the 11th hour than under FMCSA's earlier method. The modeling of time on task (TOT) developed for the 2005 rule was complex and comprehensive and remains the best available study of its kind. The D.C. Circuit faulted the Agency for failing to make this model available for notice and comment; this IFR corrects that oversight, and the RIA provides a more detailed explanation of the Agency's methods. Analysis of further data collected for the Virginia Tech Transportation Institute (VTTI) operational study supports the preliminary results described in the 2005 rule: There is no increase in ''critical incidents'' (a surrogate for crash risk) in the 11th hour of driving. FMCSA's very recent survey data show that, while the 11th hour and the 34-hour restart provisions are being used more often than in 2005, virtually no one attempts to use every minute of driving or on-duty time theoretically allowed by the regulations, just as the Agency predicted in the 2005 rule. Furthermore, the analysis of fatigue-related crashes by day of the week, described in detail later in the preamble, also supports the belief that the 34-hour restart is not resulting in increases in fatigue-related fatal crashes. FMCSA is not required to demonstrate that constant, maximum utilization of the HOS rules is as safe as the pre-2003 rules, when operational constraints (heavy traffic, shortages of parking and truck driver sleeping facilities, waiting time at terminals, eating and refueling, etc.) make it impossible to achieve that degree of utilization except for brief periods. The 2005 rule analyzed the safety implications of the HOS rules in

the real world, and all of the safety data for subsequent years have borne out the Agency's conclusion that the rule skillfully and successfully combines safety with operational benefits. These are the outcomes this IFR seeks to maintain.

C. Background

The HOS rules limit the number of hours a driver may operate a commercial motor vehicle (CMV) during each workday, the length of the workday within which driving may occur, the minimum off-duty period before starting the next workday, and the cumulative number of on-duty hours during the work week after which a CMV may not be driven. The rules also allow for the use of a sleeper berth to accumulate the equivalent of 10 consecutive hours off duty. Prior to April 2003, FMCSA and its predecessor agencies limited driving time to 10 hours within a 15-hour, extendable workday or window. In practice, the 15-hour window could be substantially longer than 15 hours because miscellaneous off-duty periods were not counted as part of the 15 hours. Drivers were required to have at least 8 consecutive hours off duty prior to the beginning of a new 15-hour duty window. Drivers using a sleeper berth could split their time in the sleeper berth into two separate periods to accumulate the equivalent of 8 consecutive hours off duty provided neither period was less than 2 hours. Drivers working for a carrier that operated 6 days each week could not drive CMVs after 60 hours on duty in a 7 consecutive-day period; drivers working for a carrier that operated CMVs 7 days each week and which chose to operate under an alternate work schedule to the 60-hour rule, could not drive CMVs after 70 hours on duty in an 8 consecutive-day period. In practice, drivers on certain schedules could ''run out'' of available on-duty time within a few days and be forced to go off duty for approximately 3 full days before being allowed to drive again, regardless of whether the driver may have fully recovered from the work demands in a shorter period of time.

In April 2003, FMCSA published a final rule that changed the requirements for drivers of property-carrying CMVs. (68 FR 22456, April 28, 2003) (''2003 Rule'') Driving was limited to 11 hours within a 14-hour, non-extendable window after coming on duty, following 10 consecutive hours off duty (known as the 11-hour limit). Although the 60- and 70-hour rules were unchanged, drivers could restart the calculation during any weekly time period after they took 34 consecutive hours off duty (known as the 34-hour restart provision). Drivers using sleeper berths were allowed to continue to split the mandatory off duty period, with the minimum period in the sleeper berth being 2 hours. (Drivers of passenger-carrying CMVs are still required to operate under the pre-2003 rules.)

The 2003 rule contained several provisions that, when taken together, improved the opportunity for drivers to obtain restorative sleep, thus decreasing the likelihood of driver fatigue. For example, among the most significant provisions, the rule established a 14-hour, non-extendable window within which a driver could drive up to 11 hours, following a 10 consecutive hour off-duty period. This provision moved drivers toward a work-rest schedule that more closely matched the natural circadian cycle of 24 hours and gave drivers the opportunity to obtain the 7 to 8 hours of uninterrupted sleep per day that most adults need. The 34-hour restart provision also gave drivers the opportunity for two 8-hour sleep periods, which research has shown can overcome cumulative fatigue associated with sleep deprivation. Because the duty period within which an operator could drive was more limited than under the pre-2003 rule and because the rest period was long enough to provide an opportunity for 7 to 8 hours of uninterrupted sleep time, FMCSA concluded it was safe and reasonable to extend the number of hours an operator could drive within the 14-hour window from 10 hours to 11 hours. The 34-hour restart provision also gave drivers and carriers operational flexibility and an improved quality of life, particularly for long haul operations, where the 7- and 8-day limits may limit flexibility by forcing drivers to go off duty for periods longer than necessary to fully recover from a typical work week. FMCSA concluded that the 14-hour rule and the mandatory 10-hour off-duty period improved safety while providing operational flexibility that the 11 hours of driving time and the 34-hour restart provide.

In April 2004, the Court overturned the 2003 rule on the grounds that FMCSA did not address the issue of driver health, as required by 49 U.S.C. 31136(a)(4). (*Public Citizen* v. *FMCSA,* 374 F.3d 1209, D.C. Cir. 2004) The Court also indicated that it had concerns about the rationale for other provisions in the rule. However, to avoid industry disruption and burden on the States, Congress enacted section 7(f) of the Surface Transportation Extension Act of 2004. This section provided that the 2003 rule would remain in effect until a new final rule addressed the Court's issues or until September 30, 2005, whichever occurred first.

After reviewing the decision and considering the concerns raised by the Court, FMCSA decided to re-propose the rule as originally published in 2003 and to seek public comments. (70 FR 3339, Jan. 24, 2005) On August 25, 2005, FMCSA published a final HOS rule that retained most of the provisions of the 2003 rule. (70 FR 49978, Aug. 25, 2005) (''2005 Rule'') The Agency significantly strengthened the 2003 rule by requiring drivers using sleeper berths to spend at least 8 but less than 10 consecutive hours in the sleeper berth and take an additional 2 hours either off duty or in the sleeper berth. The new requirement provided drivers the opportunity to obtain 7 to 8 hours of uninterrupted sleep each day. Also, the Agency required that the shorter sleeper berth period be counted against the 14-hour on-duty limit decreasing the extent to which the workday could be extended. The 2005 rule also provided relief to some short-haul operations using lighter trucks.

The purpose of the HOS rules is to reduce the likelihood of driver fatigue and of fatigue-related crashes. Although the rules that existed before 2004 (the effective year of the 2003 rule) allowed less daily driving time than the 2003 and 2005 rules (10 hours versus 11 hours), the driving could occur 15 hours or more after the driver started working without any opportunity for intervening restorative rest or sleep, and followed a shorter minimum rest period (8 hours versus 10 hours). The change to a 14-hour non-extendable window and a 10-hour rather than an 8-hour rest period was intended to limit the period in which a driver could operate a CMV and provide the driver with a work schedule that was consistent with the normal 24-hour biological clock. The 2005 rule did not limit the number of hours a driver can perform work other than driving, but if a driver worked after the 14th hour, he or she must take at least 10 consecutive hours off duty after finishing work before again operating a CMV. The change to a 10-hour off-duty requirement also recognized that drivers may do other things in their off-duty time besides sleeping; the 10-hour break gives them an opportunity to obtain the 7 to 8 hours of sleep most people need to be rested and to carry out other day-to-day personal activities. The 34-hour restart provision provides drivers with an opportunity to obtain two 8-hour rest periods, which research indicates can overcome cumulative sleep deprivation. Similarly, the 2005 change to the sleeper berth provisions eliminated the

practice of splitting time in the sleeper berth into increments that were too short to provide an opportunity for 7 to 8 consecutive hours of sleep.

FMCSA addressed the issue of driver health in the 2005 rule, as required by 49 U.S.C. 31136(a)(4). In preparing the 2005 rule, FMCSA researched both U.S. and international health and fatigue studies and consulted with Federal safety and health experts. In addition, FMCSA asked the Transportation Research Board (TRB) of the National Academies to contract with a research team of experts in the field of health and fatigue to prepare a summary of relevant literature through the TRB Commercial Truck and Bus Safety Synthesis Program. The literature review was conducted using two teams of health and transportation experts to identify and summarize the available research literature relevant to the 2005 rule. This review included research findings that discussed the relationship between the hours a commercial motor vehicle driver works, drives, and the structure of the work schedule (on-duty/off-duty cycles, time-on-task, especially time in continuous driving, sleep time, etc.), and the impact on his/her health. The research studies cited in this interim rule are included in the List of References in the 2005 final rule (70 FR 49978, at 50067). Copies or abstracts are in the docket referenced at the beginning of this notice.

FMCSA re-affirms its findings on driver health outlined in the 2005 final rule. For a complete discussion of the health of drivers operating under the HOS rules, see the August 25, 2005 final rule (70 FR 49978, at 49982).

Public Citizen and others challenged the August 2005 rule on several grounds, as did the Owner-Operator Independent Drivers Association (OOIDA). On July 24, 2007, the Court rejected OOIDA's arguments, which focused on the sleeper berth provision, but accepted part of Public Citizen's arguments and vacated the 11-hour driving time and 34-hour restart provisions (*Owner-Operator Independent Drivers Association, Inc.* v. *Federal Motor Carrier Safety Administration,* 494 F.3d 188 (D.C. Cir. 2007)). Public Citizen challenged the provisions on four grounds. First, Public Citizen contended that FMCSA's actions were inconsistent with the Administrative Procedure Act (APA) requirement for notice and comment rulemaking because the Agency did not disclose in time for comment the methodology of a model central to the Agency's justification for the rule. Second, when the methodology was disclosed, FMCSA did not provide an explanation for some of its critical elements, thus rendering the rule arbitrary and capricious. Third, FMCSA's treatment of a number of other safety considerations was also arbitrary and capricious. Finally, Public Citizen argued that the rule failed to protect driver health. The Court vacated the rule provisions based on the first two arguments and did not address the last two.

The Court concluded that FMCSA did not satisfy the APA's requirements because the Agency failed to provide an opportunity for public comment on the methodology of the Agency's operator-fatigue model, which FMCSA used to assess the costs and benefits of alternative changes to the HOS rules. In particular, the Court found the Agency had not adequately disclosed and made available for review the modifications it made to the 2003 operator-fatigue model to account for time-on-task effects in the 2005 analysis. The Court concluded that the methodology the Agency used changed and did not remain constant from 2003 to 2005 because the time-on-task element in the model was new and constituted the Agency's response to a defect in its previous methodology. The Court listed several elements of the process by which the Agency calculated the impact of time-on-task that it held could not have been anticipated and that were not disclosed in time to allow for public comment.

The Court also found, turning to Public Citizen's second argument, that FMCSA did not provide an adequate explanation for certain critical elements in the model's methodology. As its basis for vacating the increase in the daily driving limit from 10 to 11 hours, the Court found arbitrary and capricious what it described as FMCSA's ''complete lack of explanation for an important step in the Agency's analysis,'' i.e., the manner in which it had plotted crash risk as a function of time-on-task/hours of driving. The Court also found that FMCSA failed to provide an explanation for its method for calculating risk relative to average driving hours in determining its estimate of the increased risk of driving in the 11th hour. As its basis for vacating the 34-hour restart provision, the Court found that FMCSA also provided no explanation for the failure of its operator-fatigue model to account for cumulative fatigue due to the increased weekly driving and working hours permitted by the 34-hour restart provision.

Based on these two findings, the Court found it unnecessary to reach Public Citizen's other two arguments. In addition, the Court rejected three additional challenges to the 2005 Rule raised by OOIDA.

In an order filed on September 28, 2007, the Court granted a 90-day stay of the mandate. The Court directed that issuance of the mandate be withheld until December 27, 2007.

D. FMCSA's Response to the Court's Decision

This rulemaking addresses the issues that were identified by the Court in overturning two provisions of the 2005 rule. It seeks comment on the methodology of the model central to the justification for this IFR. It is based on the Agency's evaluation of new safety and operational data, additional analysis and modeling of the relationship between hours of driving and fatigue-related large truck crashes, discussion of the concept of cumulative fatigue in the context of driving activity, and the collection and evaluation of new data on the benefits and costs of the 11-hour driving limit and the 34-hour restart provisions. As an additional step to ensure the soundness of the Agency's analytical methods, we are subjecting our analysis to peer review.

By re-adopting the 11-hour limit and the 34-hour restart, the Agency's intent is to allow motor carriers and drivers to combine work-rest schedules that follow the optimal 24-hour circadian cycle (10 hours off duty and 14 hours on duty) while maintaining highway safety with operational flexibility. By adopting these rules as interim, the Agency is seeking to avoid significant and costly disruption of existing industry compliance and State enforcement practices while ensuring that the actions and underlying safety analysis are available for comment from all interested parties before issuing a final rule. In the meantime, this will ensure that an uninterrupted safety regime remains in place with State enforcement laws, policies, and personnel.

The 2005 rule includes a provision stating that ''[a]ny regulations on hours of service of drivers in effect before April 28, 2003, which were amended or replaced by the final rule adopted on April 28, 2003 [69 FR 22456] are rescinded and not in effect'' (§ 395.0). Because the D.C. Circuit did not address this provision, either in *OOIDA* v. *FMCSA* or in its response to FMCSA's response in support of ATA's motion for a stay, the Agency must now adopt an IFR to forestall the significant confusion that would otherwise occur in the motor carrier industry, interfering with efforts to restore an orderly HOS regime.

The two provisions being adopted in this rule, on an interim basis, are part of a broader, critical set of five HOS

provisions included in this IFR. The other three critical provisions of the 2005 rule are: (1) The increase in the minimum off-duty period from 8 consecutive hours to 10 consecutive hours to ensure drivers have an opportunity to obtain up to 8 hours of sleep; (2) the establishment of a 14-hour, non-extendable window from the start of the workday within which all driving must be completed; and (3) the modification of the sleeper-berth rule to require an 8-hour sleeper berth period, thereby ensuring that drivers have an opportunity to obtain up to 8 hours of uninterrupted sleep. These provisions function along with the 11-hour limit and the 34-hour restart provision to protect against degradation of driver's cognitive or psychomotor skills due to fatigue.

Section E describes additional analysis conducted since 2005 that validates the modeling relied upon by the Agency to examine the relationship between the risk of a fatigue-related large truck crash during the 11th hour of driving. It also addresses cumulative fatigue as it relates to the driving and restart provisions. In its analysis of the 34-hour restart provisions being adopted in this IFR, the Agency re-examined the research pertaining to long work hours and sought additional research completed after the 2005 rule. The Agency found no new research that addressed the relationship of long work hours to motor-vehicle driving safety.

Safety data collected and analyzed since the 2003 HOS rule became effective, described below in Section F, address the impact of the 11-hour driving limit and the 34-hour restart provisions and validate the Agency's argument that safety has been maintained under these provisions. The Agency has collected new operational data, described in Section F, that support its prior conclusions with regard to the cost-benefit analysis of the 11-hour driving limit and the 34-hour restart provision. These data also suggest that reverting to the pre-2003 rule 10-hour driving limit and eliminating the 34-hour restart provisions would be significantly disruptive to drivers, carriers, and to the States where most of the enforcement of HOS violations occur. It would also be disruptive to the safe and efficient movement of freight and cause delays in the delivery of essential goods and services to the American people.

E. Evaluation of Issues Concerning the Regulatory Impact Analysis

The D.C. Circuit's 2007 decision held that FMCSA failed to provide an adequate opportunity for review of certain aspects of the RIA. The Agency is providing a 60-day opportunity for review and comment on the RIA supporting this interim rule and the interim rule itself. Since the public has submitted comment on many aspects of this analysis in previous rulemakings, and given the Agency's desire to issue a final rule in a timely fashion, FMCSA believes 60 days is an adequate amount of time to afford the public opportunity for comment.

The Court also held that the Agency had not provided an adequate explanation for two critical elements of the model in the RIA accompanying the 2005 rule: (1) The analysis of time-on-task; and (2) the analysis of how the 34-hour restart affected cumulative fatigue. This section addresses these two topics. First, in support of this interim rule the Agency has reevaluated how the effects of extended driving hours (i.e., time-on-task or TOT) were taken into account in its cost-benefit model. This section summarizes how, in the RIA accompanying this rule, the Agency has responded to questions about the TOT analysis raised by Public Citizen and the Court in its July 2007 opinion. FMCSA's careful analysis uncovered several necessary revisions, but the net effects of these revisions are minor. Second, this section addresses the issue of cumulative fatigue and describes the Agency's conclusion, based on recent crash data and operational data, that there is no evidence that the 34-hour restart provision has led to harmful cumulative fatigue.

Original Analysis

The goal of the Agency's 2005 analysis was to assess the change in fatigue-related crash risks that would result from eliminating driving in an 11th hour of driving. Assuming motor carriers will still deliver the same volume of freight even without the 11th hour, FMCSA concluded that driving that could not be completed in the 11th hour would be completed by additional drivers in somewhat shorter trips. Crashes, including some that are fatigue-related, will occur in those shorter trips. The 2005 RIA calculated the average fatigue-related crash rate in trips that allow the 11th hour compared to the rate in the replacement trips that do not.

A TOT effect was added to the fatigue model by establishing a function relating TOT and the percentage of crashes attributable to fatigue, relative to typical fatigue levels, and using that relative risk to scale up the fatigue crash risk for hours with above-average fatigue. The model was then calibrated by scaling the results to bring the average fatigue crash risk in the baseline in line with the rate projected for long-haul driving in earlier modeling of the impacts of the 2003 rule.

To find the relationship between TOT and fatigue, FMCSA used Trucks Involved in Fatal Accidents (TIFA) data from 1991 through 2002 (A general discussion of the TIFA data set can be found later in this IFR under section F's subheading ''Trucks Involved in Fatal Accidents (TIFA) Data''). For each TOT level from the first hour through the 12th, FMCSA computed the average percentage of crashes caused by fatigue. Few data points were available for TOT levels beyond the 12th hour, not least because it was illegal, in most cases, to drive past 10 hours during this time period. To use the limited data on fatigue percentages at high TOT levels without introducing too much variability, FMCSA pooled the data for all crashes beyond 12 hours: we constructed an observation that assigned the average percent fatigue related crashes to the average TOT for all crashes beyond 12 hours, and used this as an additional data point in the analysis. Specifically, the average percentage of fatigue-related crashes for these crashes was 24.75 percent; and the average TOT was 16.7 hours.

A regression analysis included this combined data point and showed a clear pattern of increasing fatigue-crash percentages at high TOT levels, as shown in Exhibit 1. A cubic function fit the data well, including the final, combined point.

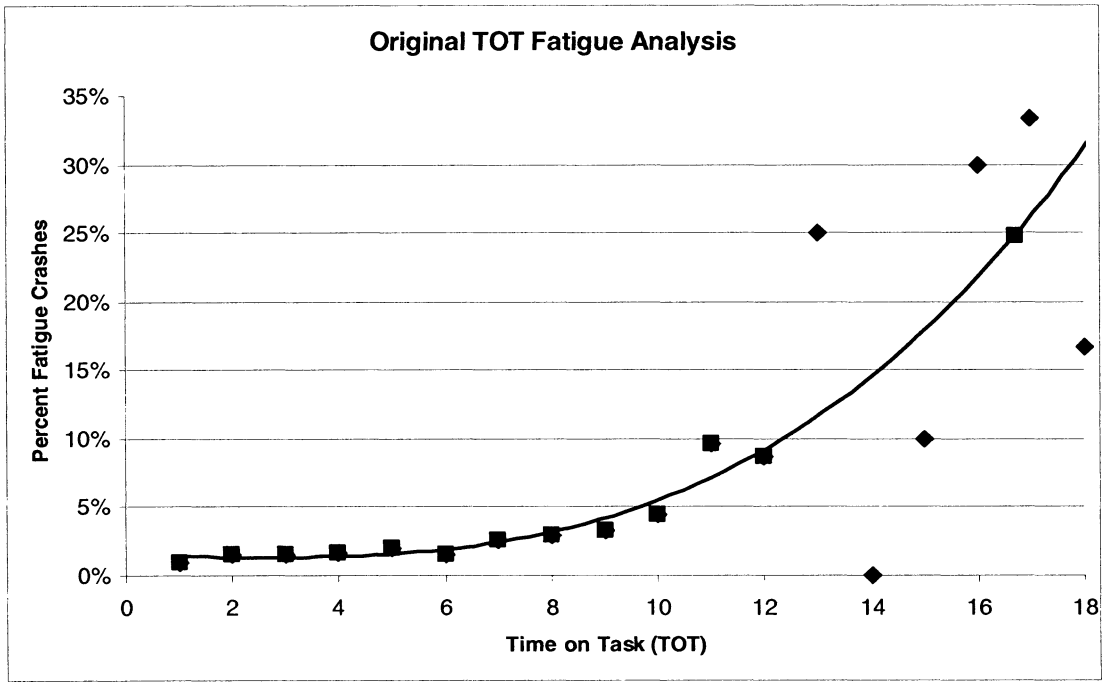
From Exhibit 1, it appears that the data point for the 11th hour by itself lies well above the general pattern of most of the data. In the years from 1991 through 2002 during which the data were collected, driving beyond 10 hours violated the HOS rules. There were two exceptions when driving beyond 10 hours would not have violated the HOS rules. First, driving beyond 10 hours would not have violated the HOS rules when the driver was driving in intrastate commerce under State HOS rules. Second, driving beyond 10 hours would not have violated the HOS rules when the driver was driving under the Federal adverse driving conditions [1] exception, 49 CFR 395.1(b)(1), which by its very nature suggests a more stressful work environment at the time of the 11th hour of driving. Thus, the only drivers represented were those who were willing to violate the rules or who were exempt from the rule and may,

[1] ''Adverse driving conditions'' means snow, sleet, fog, other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the person dispatching the run at the time it was begun.

therefore, have been unusually fatigued for reasons other than TOT.

As shown in exhibit 1, the model's predicted relative risk at the 11th hour is lower than the raw percent of fatigue related crashes at the 11th hour. This is not surprising, however, given the standard errors of the estimates at the longer driving times. There were 94 crashes in the 11th hour in the data set; even if the predicted value of about 7 percent fatigue is correct, a random selection of 94 crashes would frequently show 9 or more due to fatigue.

Exhibit 1 - Original Time on Task (TOT) Fatigue Analysis



Using the cubic function, FMCSA calculated the probability that a crash at a given TOT would be coded as fatigue-related. In order to calculate the impacts of allowing the 11th hour of driving, FMCSA then had to take these results and apply them to a model of what would happen to driving patterns with and without the 11th hour provision. FMCSA used these modeling results to calculate a TOT ''adjustment factor'' to calculate a total risk of fatigue-related large truck crashes, incorporating both TOT and non-TOT fatigue risk factors. In order to scale the effects, in the modeling, each fatigue probability for TOT levels of 8 hours or more was divided by a measure of the average fatigue probability across the first 11 hours, as seen in the TIFA data. This was simply to prepare the TOT results for use in the overall model, and is explained in more detail in the RIA. If properly performed, this rescaling should not affect the results of the analysis of each option, since the relative relationship of fatigue-related risk to driving hours is unaffected by the scaling factor. In the 2003 model, for TOT less than 8 hours, no incremental fatigue risk was calculated on the grounds that for these hours fatigue was at or below average. As discussed later on in this preamble, the lack of adjustment for the hours before 8 biased the results, and needed to be addressed in revising the analysis.

This approach created fatigue adjustment factors. For each hour of driving that was modeled, the predicted fatigue crash levels in the absence of a TOT effect were multiplied by these factors.

This analysis was used to calculate the reduction in crash risks resulting from eliminating the 11th hour. In a model run that allowed the 11th hour, some hours of driving would fall into the 11th hour; their predicted non-TOT-adjusted fatigue crash likelihoods would be multiplied by a factor greater than 1.0, based on the modeling results, which would increase the values to reflect the higher fatigue levels expected at high TOT levels. In runs that eliminated the 11th hour, the predicted non-TOT fatigue crash risks would be multiplied by generally smaller TOT multipliers, and so the predicted average crash risk would be lower than in the run that allowed the 11th hour. Using this method, and calibrating the model so that the baseline run would show 7 percent fatigue-related crashes, FMCSA found that eliminating the 11th hour would reduce crash-related damages by about 0.3 percent, worth about $60 million annually.

Challenges to the Analysis

In the 2007 challenge by Public Citizen, the original analysis was disputed in several ways. First, petitioners questioned the use of a function that combined the data points beyond 12 hours and treated them as though they fell near the 17th, rather than at some other point on the graph (e.g., at the 13th hour). Second, the reason for dividing the predicted fatigue levels from the TOT function by the average fatigue-related crash rate was questioned. Third, the value used to adjust the total crash risk to the fatigue-related crash risk was criticized as being based on TOT hours 1–11, rather than the hours 1–10 that would be allowed in the alternative that eliminated the 11th hour. FMCSA's responses to these challenges, and the revisions to the analysis that were made as a consequence, are explained here.

Statistical Approach. FMCSA's basic approach of fitting a function to the entire range of TOT hours rather than relying on the percentage of crashes at

a particular hour is a widely accepted statistical method. Relying on the percentage of fatigue crashes for individual TOT hours would subject the analysis to great uncertainty, because random factors can cause large changes in measured percentages of small numbers. The data used in the 2005 analysis, for example, shows that in the 13th hour, 25 percent of fatal crashes are fatigue-related, while the 14th hour shows 0 percent fatigue crashes; the 11th hour shows 9.6 percent, while the 12th shows only 8.7 percent. Further, data can vary across years. For example, in data and analysis explained below, in 2004 there was not a single fatigue-related fatal crash in the 11th hour. None of these widely varying values are precise measures of what would be seen if more observations were available. If TOT affects fatigue crash risks, it is more likely to be due to an underlying tendency to become more fatigued with longer periods of driving than to the individual effects of particular hours of driving. The need to fit a function to the data, extrapolating from the large volumes of crash experience at low TOT levels, was in fact recognized by the Court in its 2004 decision:

> The mere fact that the magnitude of time-on-task effects is *uncertain* is no justification for *disregarding* the effect entirely. The agency, for example, could have extrapolated the time-on-task effects of driving longer hours using crash-risk data derived from drivers who drove for shorter periods of time. (*Public Citizen* v. *FMCSA*, 374 F.3d 1209, D.C. Cir. 2004, Slip opinion at 16)

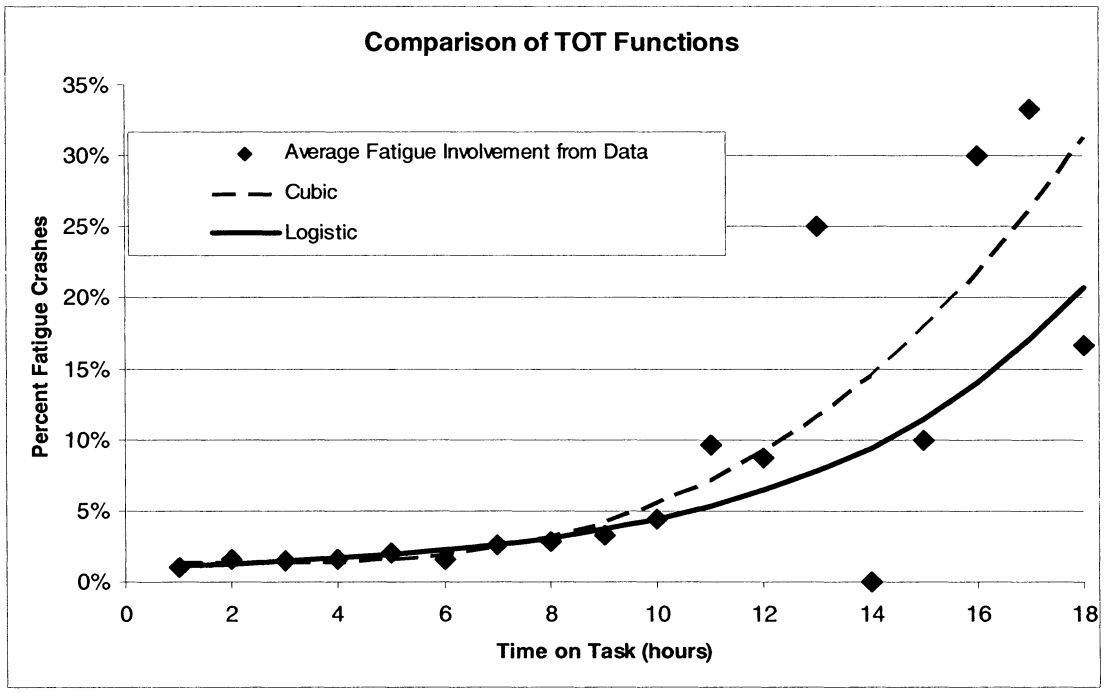
FMCSA believes the use of a combined data point at the average TOT and average fatigue crash risk along with the use of a cubic function were reasonable approaches to the need to fit a function and use the limited data available for high TOT values. Moreover, in reassessing this model, we have evaluated the suggestions made by Public Citizen and found that they would have been inappropriate. Specifically, Public Citizen suggested a method by which the average crash risk shown in the data for longer driving hours could have been combined and then placed at 13 hours for the purposes of modeling. If fatigue goes up steadily with TOT, one would expect the average fatigue percentage of crashes at *and beyond* 13 hours will be higher than the fatigue percentage at *exactly* 13 hours. Thus, combining all the high-TOT data at 13 hours would have biased upward the estimated relationship between TOT and fatigue-related crash risk.

It is true that FMCSA did not use more recent statistical modeling techniques that utilize all of the individual observations of crashes across all TOT levels, but rather aggregated observations at specific hours of TOT to calculate and model those percentages. [2] One flaw in the original approach is that the cubic functional form allows for fatigue percentages that are greater than 100 percent or less than zero, which are outside the range of possible values for fatigue percentages. Another issue is that, by combining the data beyond the 12th hour, the analysis leaves out some of the available information: for example, it does not consider the relative numbers of crashes at different TOT levels. The revised analysis, described below, addresses these shortcomings in the original approach and employs a superior statistical method for analyzing binary outcomes, i.e., whether the crash was fatigue-related crash or not. FMCSA specifically requests comment on this new modeling approach.

In response to the D.C. Circuit, FMCSA has re-estimated the function using a flexible logistic function, which lets predicted fatigue values range only from 0 to 100 percent. In this approach, every available crash data point was used, and several variants were tested to find the best-fitting logistic curve. See the RIA's Appendix V for details. The RIA is in the docket referenced at the beginning of this notice. In addition, because there are other determinants of fatigue-related crash risk besides the number of hours driving, FMCSA also explored taking other variables into account, including time of day, day of the week, and type of power unit (truck tractors or straight trucks). Again, this multivariate approach to predicting risk is a standard statistical technique. These extra factors did not change the simple relationship of TOT to fatigue crash risk; however, there are other interesting results relevant to the restart provision we will explain further below. This approach yielded a TOT fatigue crash risk function that was generally similar to the original cubic function for low TOT levels, but lay somewhat lower at the 11th hour as shown in Exhibit 2.

[2] In an analysis recently submitted to the Court by ATA, an expert statistician states that there is a ''reasonable basis in statistical theory and practice for FMCSA's approach.'' He has concluded that FMCSA's approach ''has a reasonable basis, in contrast with [Public Citizen's] illustrative example, which is virtually guaranteed to produce a biased result.'' The expert found that ''FMCSA's cubic regression curve matches the curves produced by more sophisticated methods quite closely over the relevant range of driving hours, in contrast to [Public Citizen's] illustrative alternative curve, which departs substantially from the curves produced by more sophisticated methods.'' Declaration of Dr. M. Laurentius Marais, Ph.D., at ¶ 6. See Tab F of the ATA Motion's Addendum to read Dr. Marais's declaration. It is in the docket referenced at the beginning of this notice.

Exhibit 2 - Comparison of Time on Task (TOT) Functions



Note for Exhibit 2. A point may appear to be "missing," if one compares Exhibit 2 to Exhibit 1. The missing data point is not in Exhibit 2 because it averages the data above 12 hours into a single point. FMCSA used this point to estimate the cubic function in Exhibit 1. FMCSA did not use this point in estimating the logistic function and left it off of Exhibit 2.

Division of the Fatigue Percentage by its Average. Dividing the predicted fatigue crash risk by an average value is a reasonable way to create a TOT adjustment factor that changes relative fatigue values within a set of data without changing the average value of that set. The fatigue model used in the original analysis yielded raw fatigue predictions for each simulated driving hour, but did not take TOT explicitly into account. Suppose these raw predictions happened to average 7 percent fatigue. To adjust these predictions to account for TOT effects, each simulated hour's fatigue percentage should be multiplied by an adjustment factor based on the TOT fatigue function: The raw predicted value for an 11th hour of driving, for example, should be multiplied by a larger value than for a 1st or 8th hour.

FMCSA could have used the TOT fatigue function directly as an adjustment factor: Raw predicted values for the 11th hours could have been multiplied by 0.072, and those for the 1st hours by 0.014. On average, however, the resulting values would have been much smaller than the original values, because the average value of the TOT fatigue function across all hours is less than 0.03. To return the typical fatigue value to a more realistic level, the adjusted values would have had to be scaled up by close to two orders of magnitude. As an alternative, the TOT fatigue function can first be divided by its average. This step creates an adjustment factor that averages 1.0, with some values above 1 and some below. Using this adjustment factor will take the TOT effect into account while leaving the typical measured fatigue level relatively unchanged.

Choice of the Divisor. In the original analysis, the TOT adjustment factor was created by dividing the TOT fatigue function by 2.92 percent, which was the average relative fatigue-related crash risk level for the first 11 hours as seen in the underlying data. It was argued by Public Citizen that the average value of the function for the first 10 hours would have been more appropriate. Because of the details of the analysis, however, and the way the results were scaled, the choice of divisor has no effect on the results. As demonstrated in Appendix V of the RIA, when the fatigue adjustment factors are applied to both the baseline and policy options, the divisor cancels itself out, and has no effect on the estimate of the relative fatigue crash percentages with or without the 11th hour.

Thus, FMCSA concluded both that there is a conceptual basis for dividing the predicted fatigue levels by TOT by the average fatigue level—to create an adjustment factor centered on 1.0—and also that the choice of an exact divisor is unimportant because that factor cancels out in the mathematical calculation.

Updates to the Analysis

FMCSA concluded that two issues newly identified by the D.C. Circuit needed to be addressed in revising the estimated benefits of eliminating the 11th hour. First, the function used by the Agency was not ideal. As discussed above, although we continue to believe our original approach is reasonable, we have developed a more sophisticated model. Second, the approach laid out above was implemented incorrectly. Although all TOT hours should have been adjusted, in the 2005 analysis, only hour 8 or more were given adjustment factors. The Agency has calculated how these two issues would have affected the estimated benefits of eliminating the 11th hour by estimating the change in the average fatigue crash risk twice: once with the original approach, and once with an updated approach. For each approach, this was accomplished by

- Estimating the fraction of driving that was done in each TOT hour,

assuming that driving 11 hours was legal;

- Multiplying the fraction for each TOT hour by a TOT fatigue adjustment factor;
- Summing the results of this multiplication;
- Repeating these calculations for a case that allowed only 10 hours of driving; and
- Finding the percentage change in the fatigue percentages between the 11 and 10 hour cases.

The details of these calculations are shown in Appendix V of the RIA. Under the original analysis, the fatigue crash risk appeared to fall by almost 3.6 percent if the 11th driving hour were restricted. Under the revised analysis, the fatigue crash risk fell by 5.1 percent. Thus, correcting the TOT approach is expected to increase the projected TOT safety benefits by a factor of about 5.1 percent/3.6 percent, or about 1.42 times. Thus, if the analysis had been done correctly, the true benefits would be about 1.42 times the original estimate of $60 million, or about $85 million per year.

Comparisons of Revised Benefits to Estimated Costs

The increase of $25 million in benefits per year still leaves the projected benefits of restricting the 11th hour of driving of $85 million per year far short of the projected costs. The costs of prohibiting the 11th hour were estimated by finding the average reduction in driver productivity in shifting between a case that assumed driving time is capped at 11 hours and a variant that capped driving time at 10 hours. As described in Appendix V of the RIA, the change in productivity of almost 2 percent, valued at almost $300 million per percentage point, led to an estimated cost of $586 million per year for eliminating the 11th hour. In the original analysis, subtracting the benefits of $60 million left estimated net costs of $526 million; with the revised TOT analysis, the net costs are now estimated to be $501 million. This reduction in net costs from $526 million to $501 million amounts to less than 5 percent of total net costs. Thus, the revisions to the TOT analysis have very little effect on the estimated cost-effectiveness of eliminating the 11th hour.

The RIA did present a sensitivity analysis that showed, under a variety of unique circumstances, the net costs could fall from $526 million to about $240 million. As such, the conclusion reached in the RIA accompanying this rule was that, regardless of the assumptions made, whether they were related to the percent of all large truck crashes that are fatigue-related, the relative risk associated with fatigue-related large truck crashes in the 11th hour, or the value of a statistical life, there would still be a minimum annual net cost of approximately $160 million to eliminate the 11th hour of driving.

The 34-hour restart provision.

The 34-hour restart provision gives drivers, particularly long-haul drivers, operational flexibility in planning their trips that previously was not available with the 7- and 8-day limits. FMCSA set the limit at 34 hours because that would provide drivers with an opportunity to obtain two 8-hour sleep periods while keeping them on a 24-hour cycle. The Agency adopted the 34-hour restart after reviewing studies considering the time periods necessary for overcoming cumulative fatigue caused by sleep debt. [Dinges, D.F., *et al.* (1997), p. 267; Balkin, T., *et al.* (2000), p. ES–8; Belenky, G., *et al.* (2003), p. 11; Van Dongen, H.P.A., *et al.* (2003), p. 125. The research studies cited in this interim rule are included in the List of References in the 2005 final rule (70 FR 49978, at 50067). Copies or abstracts are in the docket referenced at the beginning of this notice.] As the Agency explained in 2005, fatigue resulting from sleep loss is usually characterized as acute, resulting from a single insufficient sleep period; or cumulative, resulting from two or more insufficient sleep periods [Rosekind, M.R., *et al.* (1997), p. 7.2]. Rosekind describes three types of sleep loss (i.e., total sleep loss, partial sleep loss, and sleep debt): ''Sleep loss can occur either totally or as a partial loss. Total sleep loss involves a completely missed sleep opportunity and continuous wakefulness for about 24 hours or longer. Partial sleep loss occurs when sleep is obtained within a 24-hour period but in an amount that is reduced from the physiologically required amount or habitual total. Sleep loss also can accumulate over time into what is often referred to as 'sleep debt.' Sleep loss, whether total or partial, acute or cumulative, results in significantly degraded performance, alertness and mood'' [*Id.*].

Public Citizen's challenge to the 2005 rule argued that the restart provision allows drivers to work more hours each week, leading to cumulative fatigue that is different from sleep debt. In its opinion invalidating the 34-hour restart the Court agreed, explaining that it was interested in a ''different kind'' of cumulative fatigue, the cumulative fatigue ''associated with the increased driving and working hours that [the 34-hour restart] would permit,'' and not ''the 'sleep deficit' that 'accumulates with successive sleep-deprived days.' '' The Court concluded that FMCSA had not adequately considered this ''cumulative fatigue.''

This interim rule responds to this finding by the Court in two parts. First, the Agency found in 2005 that few studies address the effect of recovery periods between work periods spanning multiple days, such as a workweek [O'Neill, T.R., *et al.* (1999), p. 2; Wylie, C.D., *et al.* (1997), p. 27; Smiley, A., & Heslegrave, R. (1997), p. 14]. After reviewing the studies relevant to the 34-hour recovery period, as cited in the 2003 rule and those submitted by commenters to the 2005 NPRM, the Agency determined that current scientific evidence is limited with respect to the type of cumulative fatigue raised by Public Citizen and the Court. Studies of time-on-task frequently measure ''fatigue'' as a function of drowsiness. For example, Wylie, C.D., *et al.*'s 1996 operational study of 80 long-haul drivers engaged in revenue-generating runs in the U.S. (under the 10-hour driving limit) and Canada (under that country's 13-hour driving limit), reported that time-on-task was not a strong or consistent predictor of observed fatigue, measured as drowsiness, as observed in video records of comparable daytime segments of driving. In Wylie's study, no difference in drowsiness was found between 10 and 13 hours of driving. Some measures of performance, such as lane tracking and individual cognitive performance, as well as self-rating of fatigue, were better at 10 hours of driving time than at 13 (lane tracking was confounded by difference in driving routes and road conditions in the two countries). Conversely, reaction time was better at 13 hours of driving than at 10. The authors noted that the lack of variance in drowsiness between driving periods may be attributable to the fact that the study measured only daytime drowsiness. Other research suggests the body's circadian rhythm limits the negative effects of more hours of work during daytime operations. [Wylie, C.D., *et al.* (1996) pp. 5.13–5.14].

A 1999 study evaluated the effects on fatigue and performance during a daytime schedule of 14 hours on duty and 10 hours off duty, with drivers performing simulated driving and loading/unloading tasks. The authors found mild cumulative effects on subjective measurements of sleepiness; a slight but statistically significant deterioration in duty-day subjective sleepiness, reaction time response, and measures of driving performance over the course of a week; but no cumulative deterioration of driver response in

crash-likely situations. The authors reported that a schedule of 14 hours on duty (with 12 hours of driving) and 10 hours off duty for 5 consecutive day periods did not appear to produce significant cumulative fatigue over the 2-week testing period [O'Neill, T.R., *et al.* (1999), p. 48].

Additionally, as its second part of its response to the Court's finding, FMCSA sought recent (i.e., post-2005) scientific studies addressing cumulative fatigue of the type focused upon by the Court. Although some popular literature discusses ''burnout,'' the Agency does not consider these anecdotal narratives to be evidence that cumulative fatigue is a significant concern under normal driving conditions. While the Agency concluded based on a reasonable review of the literature that cumulative fatigue associated with increased weekly truck driving activity under the conditions similar to that studied in the literature was not a substantial problem, the critics of the 2005 rule did not provide any scientific literature supporting their claims of cumulative fatigue specific to truck driving. It is therefore not surprising that FMCSA has been unable at this time to identify an available model that it could use to evaluate the effects of cumulative fatigue as a factor separate from fatigue caused by sleep deficits in a motor carrier context. FMCSA seeks existing studies or models that could be used to further analyze and validate the veracity of these claims regarding cumulative fatigue, specifically studies or models analyzing or focused on truck driving.

Furthermore, Public Citizen discussed a scenario by which the new rulemaking would allow for a substantially higher number of hours than would be found under the more normal driving conditions similar to those studied in the literature. This would be accomplished by driving 11 hours, immediately going off duty for 10 hours, and repeating this pattern.

First, although such a pattern could develop in certain operations for certain periods, nothing like this was observed in FMCSA's 2005 and 2007 Field Surveys. Additionally, non-standard driving patterns were allowed under the pre-2003 rule that had the potential to result in significantly more sleep-associated fatigue than the driving patterns that would be allowed even under Public Citizen's unlikely scenario. For example, under the pre-2003 HOS rules, a driver was permitted to exclude intermittent periods of off-duty time from the maximum 15 hours of on-duty time, after which the driver could not drive a CMV. Therefore, a driver having several off-duty periods (e.g., meal breaks, inactivity awaiting dispatch, personal business) of several hours each during the day could legally drive a CMV in the 24th or later hour after the start of the duty day. Under the current HOS rules, this driver could not drive a CMV after the 14th hour of coming on duty following 10 or more consecutive hours off duty, regardless of any intermittent off-duty periods. FMCSA therefore believes the pre-2003 possibilities of ''extreme'' driving behavior are actually eliminated under the 2003 or 2005 rule. FMCSA specifically requests comment on this conclusion.

Furthermore, FMCSA has conducted additional technical analysis of the Trucks Involved in Fatal Accidents (TIFA) data (referenced later in this IFR) to examine the potential relationship between the probability of a fatigue-related large truck crash and other factors that one might expect to influence the likelihood of a fatigue-related crash. We believe this further analysis is relevant to both the more standard driving schedules commonly observed in the industry, and work schedules where commercial drivers may be pressing the daily driving and weekly on-duty limits. This is because TIFA data captures various types of commercial drivers involved in fatal large truck crashes, without regard to specific operating schedules. As such, if cumulative driving hours across a non-interrupted series of days independently caused an increase in fatigue-related crash risk, FMCSA believes this analysis would identify it. After studying the pattern of restarts in the industry, FMCSA determined that a reasonable proxy for the time spent driving over multiple days after a restart is the day of the week. This is because the majority of restarts happen over a weekend, as revealed in the 2007 Field Survey discussed later in this preamble.

Specifically, a logistic regression modeling approach was used for this analysis and TIFA data covering the period 1991–2004. Several additional TIFA variables of interest were included in the logistic regression beyond the ''hours of driving'' used to address time on task (TOT) in the regulatory impact analysis (see RIA in docket for details of that analysis). These additional variables included day of the week of the crash, time of day of the crash, the number of vehicles involved in the crash, and the type of vehicle involved (i.e., straight truck versus tractor-trailer combination). The additional variables made it possible to broaden the analysis of potential causes of large truck fatigue-related crashes, which added interesting insights but did not, in the end, change the TOT analysis itself (as is fully discussed in the RIA). For instance, FMCSA modeled single- and multi-vehicle crashes. For these analyses we excluded cases where the hours of driving were not reported, where the vehicle was government operated and exempt under 49 CFR 390.3(f)(2), or where the vehicle was a daily rental and the gross vehicle weight rating (GVWR) was 26,000 pounds or less. We fitted various logistic models to the data. Specifically FMCSA estimated five unique logistical regression models which included the following independent variables:

- Model 1: Hours of Driving;
- Model 2: Hours of Driving, Day of week, Time of day (0 to 24), Large Truck Type (Single or Tractor/Trailer);
- Model 3: Hours of Driving, Day of week grouped (Mon, Tue–Thu, Fri, Sat–Sun), Time of day in 3-hour groups, Large Truck Type (Single or Tractor/Trailer);
- Model 4: Hours of Driving, Time of day (0 to 24), Large Truck Type; and
- Model 5: Hours of Driving, Time of day in 3-hour groups, Large Truck Type.

The day-of-week variables in Models 2 and 3 were found not to be significant and so were excluded from Models 4 and 5. The fact that fatigue did not appear to change systematically throughout the week has a direct bearing on the question of the accumulation of fatigue with long hours of work over multi-day periods. Drivers of large trucks tend to take their extended breaks (i.e., restart periods) over the weekend as was revealed by the 2007 FMCSA Field Survey data discussed in a later section of this preamble. If heavy working schedules of truck drivers actually led to substantial increases in cumulative fatigue, we would expect to see driving performance deteriorate over the course of the week. FMCSA believes this provides sound evidence that drivers are not accumulating significant levels of ''time on task'' (TOT) cumulative fatigue over the course of the week.

The Agency has not identified any evidence that cumulative fatigue represents a significant problem under the 2003 or 2005 rule. As it stated in the 2005 final rule (70 FR 50022) with respect to the impacts of the 11-hour driving rule and the 34-hour restart, FMCSA continues to believe that ''the average driver [does] not, and cannot realistically, drive and work the longer weekly hours, on a regular basis,'' as suggested by opponents of those two provisions. It is virtually impossible for a driver to drive 77/88 hours over 7/8 days and to be on duty 84/98 hours over the same 7/8 day period. To follow the

scenario identified by these opponents, the driver would be severely limited in his or her ability to obtain fuel and food, to attend to personal hygiene needs, to park large trucks, to communicate with dispatchers, to pick up loads, to unload, and to do paperwork. FMCSA believes this is so unrealistic that seeing this type of driving behavior during the course of an inspection would cast doubt on the accuracy of the logbooks. Recent operational data do not show that drivers are working or driving these maximum amounts of hours. FMCSA believes that it is a valid exercise of its judgment to base its decision regarding the 11-hour limit and 34-hour restart on the emerging factual data about actual driving behavior and not exclusively on hypothetical and speculative calculations about the potential behavior of drivers. Affidavits submitted to the Court by ATA in support of its motion to stay the mandate provide evidence that weekly driving hours have not increased significantly under the new HOS rules. Instead, the rules, and the 34-hour restart provision in particular, are described by several trucking officials as having increased the operational flexibility available to drivers and carriers to schedule and complete work. There is, furthermore, no evidence in the crash data of the harmful effects of the ''cumulative fatigue'' expected by the critics of the 2005 rule to result from their extreme estimates of increased duty hours. Recent data in fact show that vehicle miles have only slightly increased, while the fatal crash rate for the same period has declined.

Although the Court did not reach the issue of the implications for drivers' health of the 11-hour driving limit and the 34-hour restart, the Agency continues to affirm its previous conclusions, reached after a careful examination of the available evidence, that changes to HOS under the 2005 rule, including its 11-hour limit and 34-hour restart, do not have a deleterious effect on the physical condition of drivers. FMCSA continues to believe that its conclusions accurately reflect a preponderance of the scientific data. FMCSA refers interested parties to 70 FR 49978, at 49982–49992.

F. Evaluation of Recent Safety and Operational Data Under 11-Hour and 34-Hour Rules

The 11-hour driving limit and the 34-hour restart provisions have been in place since January 2004. Thus, FMCSA has been able to compile and review a significant amount of new safety and operational data throughout the industry (data that were not available for consideration during the Court's review of the 2005 Rule). The data from this period of more than 3 years has enabled the Agency to assess the impacts of the 11-hour limit and 34-hour restart on safety, and to assess compliance with the current rules compared to the pre-2003 rules.

Safety Data

This section focuses on the most current safety data, including reviews of the following studies and data sources: (1) Fatality Analysis Reporting System (FARS) data for calendar years 2003 and 2006; (2) Trucks Involved in Fatal Accidents (TIFA) data for calendar years 2003 through 2005; (3) a Virginia Tech Study of the 10th and 11th Driving Hours; (4) an American Trucking Research Institute HOS Safety Study (2006); (5) FMCSA HOS compliance rate data between 2003 and 2006; and (6) industry crash data filed with the Court docket by ATA in 2007.

Fatality Analysis Reporting System (FARS)

FARS is a national census of fatal crashes involving motor vehicles, including large trucks. FARS data are reported annually by the States, maintained by the National Highway Traffic Safety Administration (NHTSA), and are generally recognized as the most reliable national motor vehicle crash data available. FARS data through 2006 are available to the public at: *http://www-fars.nhtsa.dot.gov/Main/index.aspx.* As discussed in the preamble to the HOS final rule in 2005, FMCSA analyzed the 2003 and 2004 FARS data to examine trends in large truck fatal crashes, and fatigue-related fatal crashes before and after initial implementation of the 11-hour driving limit and the 34-hour restart, in January 2004. Analysis of the first 9 months of data from the 2003 Annual FARS Report and the 2004 Early FARS Assessment Files (which have traditionally contained most of the fatal crashes that eventually appear in the FARS Final Report File) revealed that fatigue-coded large truck crashes, as a percent of the total large truck fatal crashes in those years, decreased from 1.7 percent to 1.5 percent. (For 2003, 54 fatigue-coded large truck crashes divided by 3,120 total large truck fatal crashes equals 1.7 percent; for 2004, 43 fatigue-coded large truck crashes divided by 2,954 total large truck fatal crashes equals 1.5 percent.) This 0.2 percent difference in the percent of fatigue-coded fatal large truck crashes represented a one-year decrease of 11.8 percent (0.2 divided by 1.7), using 2003 as the baseline.

It should be noted that NHTSA releases the annual FARS data in three waves: The first release is the Early Assessment File, which represents a projection of a partial year's worth of data to full-year and is released in the spring of the calendar year following the crash data year on interest (i.e., 2004 FARS Early Assessment data were released in Spring 2005); the second release is the Annual Report File, which represents a full year's worth of data and is released in the Fall of the calendar year following the crash data year of interest (i.e., 2003 FARS Annual Report File data were released in Fall 2004); finally, the Final Report File represents a full year's worth of data but additional data related to the crashes in the file are added. The Final Report File is released in the Fall of the second calendar year following the crash data year of interest (i.e., 2003 FARS Final Report File data were released in Fall 2005).

Since the issuance of the 2005 rule, NHTSA has released the final versions of the 2003 and 2004 FARS data files. While the numbers of fatigue-coded fatal large truck crashes were revised minimally upward in both years (as would be expected moving from Early Assessment and Annual Report files to Final Report Files), the percent of these crashes where the large truck driver was coded as fatigued (1.7 percent in CY2003 and 1.5 percent in CY2004) did not change. See Table 1.

TABLE 1.—FATAL AND FATIGUE-RELATED FATAL CRASHES INVOLVING LARGE TRUCKS, BY CALENDAR YEAR

Year	Total large truck fatal crashes	Fatigue-coded large truck crashes	Fatigue-coded large truck fatal crashes, as percent of total	Large truck vehicle miles traveled (VMT) (millions)	Large truck fatal crash rate* (per 100 million VMT)
2000	4,573	99	2.2	205,520	2.23
2001	4,451	65	1.5	209,032	2.13
2002	4,224	70	1.7	214,603	1.97
2003	4,335	74	1.7	217,917	1.99
2004	4,478	66	1.5	220,811	2.03
2005	4,551	82	1.8	222,836	2.04
2006	4,321	69	1.6	** 223,282	1.94

Fatigue-related large truck crashes are defined as those where the large truck driver was coded as fatigued at the time of the crash.
* Large Truck Fatal Crash Rate is defined as the number of fatal large truck crashes per 100 million large truck vehicle miles traveled.
** 2006 Large Truck Vehicle Miles Traveled (VMT) Projection based on 2006 FHWA Total VMT projection.
A large truck is defined as a truck with a gross vehicle weight rating (GVWR) greater than 10,000 pounds (includes medium and heavy trucks).
Source: FMCSA Analysis of Fatality Analysis Reporting System (FARS), NHTSA.

The FARS data for calendar years 2000 through 2006 (where all but the 2006 file have been finalized by NHTSA) show that the percent of fatigue-coded large truck crashes fluctuated from a high of 2.2 percent in 2000 to a low of 1.5 percent in 2001 and 2004. In the 3 years since the 2003 HOS rule has been in effect, the number of fatigue-related large truck crashes as a percent of all large truck fatal crashes each year has remained relatively stable. And although the coding of driver fatigue at the time of a crash may be under-reported in some cases (given the difficulty in verifying fatigue-related crashes), there is no reason to believe that this under-reporting varied from year to year during this period. From these data sets, FMCSA determined that the 2005 rule, including the 11-hour limit and 34-hour restart provisions, has not had a negative impact on safety; overall large truck safety has not been compromised by the 11-hour limit or the 34-hour restart.

Also, more broadly, FARS and General Estimates System[3] (GES) data indicate that the total number of large truck fatalities fell significantly between 2005 and 2006 (by 4.7 percent), while large truck injuries fell by 7 percent. In calendar year 2000 large truck fatalities totaled 5,282 and injuries totaled 140,000. In contrast, in calendar year 2006 large truck fatalities dropped to 4,995 (or a decrease of 5.4 percent), while large truck injuries fell to 106,000 (a decrease of 24 percent). Using 2006 vehicle miles traveled (VMT) forecast data from the Federal Highway Administration and applying it to large trucks, the large truck fatal crash rate in 2006 is estimated to have decreased to 1.94 fatal crashes per 100 million large truck VMT, from 2.23 fatal crashes per 100 million large truck VMT in 2000, for a reduction of 13 percent over the last seven year period (see Table 1). The 1.94 fatal crashes per 100 million large truck VMT represents the lowest large-truck fatal crash rate recorded since the U.S. Department of Transportation began collecting data in 1975.

It is particularly relevant for analyzing the effect of the new rules, and the 34-hour restart provision in particular, to examine the crash profile of combination unit trucks (CUTs), because they have average vehicle weights greater than 26,000 pounds and are the principal heavy trucks used in the long-haul operations covered by today's 11-hour and 34-hour restart interim rules. In addition, drivers of CUTs are most likely to be involved in a fatal large truck crash.[4] Data from the 2002 Vehicle Inventory and Use Survey (VIUS) of the Department of Commerce's Census Bureau indicate that the primary range of operations for 29 percent of heavy vehicles were trips of greater than 200 miles, compared to only 12 percent of medium and light-duty trucks (with average vehicle weights of 10,001 to 26,000 pounds). In addition, FMCSA's examination of the records of duty status of over-the-road and local drivers reviewed as part of its 2005 Field Survey found that 247 of 421 (or 59 percent) of the over-the-road drivers used the restart provision at least once, while 57 of 125 (or 46 percent) of local drivers did so. In 2006, CUTs were involved in a total of 3,194 fatal crashes. This total of CUT-involved fatal crashes is the lowest since 1995. Applying Federal Highway Administration projections for VMT in 2006 to CUTs, the fatal crash rate for 2006 for combination unit trucks equaled 2.22 per 100 million VMT, which is the lowest CUT fatal crash rate since records began being collected in 1975. In addition, according to NHTSA's GES data, the CUT injury-crash rate in 2006 was 27.5 per 100 million VMT, and the property-damage-only (PDO) crash rate was 99.1 per 100 million VMT. Both the injury crash rate and the PDO crash rate for CUTs in 2006 were also the lowest since records began being collected in 1975.

Such data, in conjunction with other data presented elsewhere in this IFR, indicate clearly that the overall safety performance of the U.S. motor carrier industry has been maintained since implementation of the 2003/2005 HOS rules.

Trucks Involved in Fatal Accidents (TIFA) Data

The Trucks Involved in Fatal Accidents (TIFA) data file, another data set the Agency relies on to evaluate and make determinations regarding the HOS rule, combines large truck fatal crash data obtained annually from NHTSA's FARS with additional data items collected by the University of Michigan Transportation Research Institute (UMTRI). The UMTRI collects the additional data items through telephone interviews with truck drivers, carriers, or investigating officers after fatal crashes. UMTRI combines vehicle, crash, and occupant records from FARS with information obtained through TIFA, such as the physical configuration of the large truck, the motor carrier's operating authority, and the hour of daily driving at the time of the crash.

[3] General Estimates System is a nationally representative sample of motor vehicle crash data that are produced annually by NHTSA and used in traffic safety analyses by NHTSA as well as other DOT agencies. For more information, see *http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/GES.html.*

[4] Source Trucks involved in Fatal Accidents (TIFA) data.

TIFA and FARS variables of particular interest include whether the large truck driver was coded as being fatigued at the time of the crash, the time of day, the intended trip distance, and hours driving since the last mandatory off-duty period (a minimum of 8 hours in the case of data through calendar year 2003 and 10 hours in the case of calendar year 2004 and 2005 data).

TIFA data used in the regulatory impact analysis (RIA) for the 2005 HOS rule were for the years 1991 through 2002 (the most recent data available when the Agency published its 2005 rule). The sample size of this file represents more than 50,000 medium/heavy trucks involved in fatal crashes in the U.S., of which approximately 1,000 involved large trucks where the truck driver was fatigued. TIFA data for this period indicated that there were 94 vehicles involved in fatal crashes in the 11th hour of driving, of which 9 were coded as fatigue-related. This represents 94 instances in which the vehicle was being operated in the 11th hour following only 8 consecutive hours off duty, a violation under the rules in effect unless the driver was operating in intrastate commerce under State rules or under the adverse driving conditions exception.

The TIFA data covering calendar years 2003 through 2005 were not available for analysis at the time the Agency published the 2005 HOS rule, but these new data are illustrative, particularly with regard to the downward trend in the number of large trucks involved in fatigue-related fatal crashes each year after the Agency published the 2003 HOS rule (see Table 2).

TABLE 2.—LARGE TRUCKS INVOLVED IN FATAL AND FATIGUE-RELATED FATAL CRASHES IN THE 11TH HOUR OF DRIVING, BY CALENDAR YEAR

Calendar year (CY)	Fatal crashes	Fatigue-coded (large truck driver)	Fatigue-coded as percent of total
1991–2002	94	9	9.6
2003	13	1	7.7
2004	16	0	0.0
2005	13	1	7.7

Source: Trucks Involved in Fatal Accidents (TIFA), 1991–2005.

Specifically, in CY2003, 13 large trucks were involved in fatal crashes where the large truck driver was operating in the 11th hour of driving, but in only one of those crashes was the truck driver coded as being fatigued. In CY2004, the first year under the new HOS rule, a total of 16 large trucks were involved in fatal highway crashes in the 11th hour. This total is an increase of three over the 13 large trucks involved in fatal crashes in the 11th hour of driving in 2003, when driving in the 11th hour was illegal for most drivers. However, in 2004 *no* large trucks were involved in fatigue-related fatal crashes in the 11th driving hour. The 2005 TIFA data show 13 large trucks involved in fatal crashes while the truck driver was in the 11th hour of driving. In only one of those crashes was the truck driver coded as fatigued. The 2004 and 2005 TIFA data represent an improvement over the pre-2003 period, in terms of the percentage of large truck drivers operating in the 11th hour who were coded as fatigued at the time of the crash.

Virginia Tech Transportation Institute (VTTI) Studies

In 2005, FMCSA contracted with the Virginia Tech Transportation Institute (VTTI) to analyze data on crash risk during the 10th and 11th hour of driving as an adjunct to a large on-the-road driving study VTTI was conducting under an FMCSA and NHTSA joint initiative. This study offered an opportunity to analyze empirical data obtained under the 2003 HOS rule. The primary goal was to determine the effect, if any, of the 11th hour of driving on driver performance and drowsiness. This study did not include all drivers who participated in VTTI's large on-the-road driving study; only data collected through May 1, 2005 were available and used in the analysis published with the 2005 HOS rule (August 2005). This study, however, did involve 82 drivers working for three trucking companies who had driven approximately 1.69 million miles, under the 2003 HOS rule. [Hanowski, R.J., *et al.* (2005)]

In the analysis filed with the 2005 HOS rule, the researchers found no statistically significant difference in the number of critical incidents between the 10th and 11th hours of driving [Hanowski, R.J., *et al.* (2005), p. 9]. The study defined critical incidents as crashes, near crashes (where a rapid evasive maneuver is needed to avoid a crash), and crash-relevant conflicts (which require a crash-avoidance maneuver less severe than a near-crash, but more severe than normal driving). When the occurrence of critical incidents is used as a surrogate for driver performance decrements, there was no statistically significant difference between the 10th and 11th hour of driving. The VTTI study team meticulously examined video for each critical incident to detect driver drowsiness i.e., slow eyelid closure—a validated measure of drowsiness. VTTI concluded that when a critical incident occurred, drivers were not measurably drowsier in the 11th than the 10th hour of driving. These results may be related to another finding, showing that drivers appear to be getting more sleep under the 2003 rule than they did when the minimum off-duty period was only 8 hours. Compared to four sleep studies conducted under the pre-2003 rules, the Hanowski study found that drivers operating under the 2003 rule are obtaining on average over one hour of additional sleep per day [*Id*, p. 8].

In 2007, American Trucking Research Institute (ATRI), affiliated with the ATA, contracted with VTTI to complete the analysis with all drivers whose data was collected as part of the Drowsy Driver Warning System Field Operational Test. This analysis included data for an additional 16 drivers or a total of 98 drivers (for a total of over 2 million miles of driving data) and the initial study's results and conclusions still hold; namely, that there was no statistically significant difference in the number of critical incidents occurring in the 10th versus the 11th hours of driving [Hanowski, R.J., *et al.* (2007)]. A copy of this VTTI analysis was submitted by ATRI to FMCSA and placed in the docket for this IFR.

Additionally in 2007, FMCSA contracted with VTTI to expand the analysis on all 98 drivers to examine

critical incidence in 1st through the 11th hour driving for all drivers and for those drivers who drove a total of 11 hours. For this analysis, all critical incidents (crashes, near-crashes, crash relevant conflicts) were grouped by driving hour. An analysis of the odds ratios was calculated to estimate the relative risk of increased driving hours on critical incident occurrence. Each hour that a driver drove became a trip and was used to calculate the relative frequency of critical incidents. Figure 1 shows the preliminary findings (final results due by December 31, 2007) for the number of trips that drivers drove over the course of the Field Operational Test. VTTI used the number of trips shown in Figure 1 to assess the relative frequency of critical incident occurrence by hour of driving and these results are shown in Figure 2. While the data show a slightly elevated risk of critical incidents in the 1st hour of driving there was no discernable trend for driving hours two through eleven. VTTI examined the odds ratios to estimate the relative risk and determined that there was no statistically significant difference in the risk of a critical incident between hours 2 through 11 [Hanowski, R.J., *et al.* (2007)]. This result also held for drivers who drove an entire 11 hour period. A copy of this VTTI analysis is in the docket for this IFR. These findings are very similar to the findings of the Driver Fatigue and Alertness Study. O'Neill stated that ''simple time-on-task is not a uniformly effective determiner of performance. Factors such as time-of-day (and its relation to circadian cycle) and rest break schedule are so influential that other factors customarily associated with performance deterioration over time are dwarfed'' [O'Neill, T.R. *et al,* (1999) p. 40]. Wylie concluded that ''the strongest and most consistent factor influencing driver fatigue and alertness in this study was time-of-day'' [Wylie, C.D. (1998) p. ES–8].

Again, the findings from these three VTTI studies should not be surprising; they were consistent with the research from Wylie's Driver Fatigue and Alertness Study, which at the time of its publication was the largest on-the-road driver fatigue study. These VTTI studies showed that time-on-task or the number of hours driven is not a good predictor of driving degradation. There was no increased risk of critical incidents (crashes, near-crashes, crash relevant conflicts) of driving in the 11th verses the 10th hour of driving.

Figure 1 - Frequency of Trips by Driving Hour

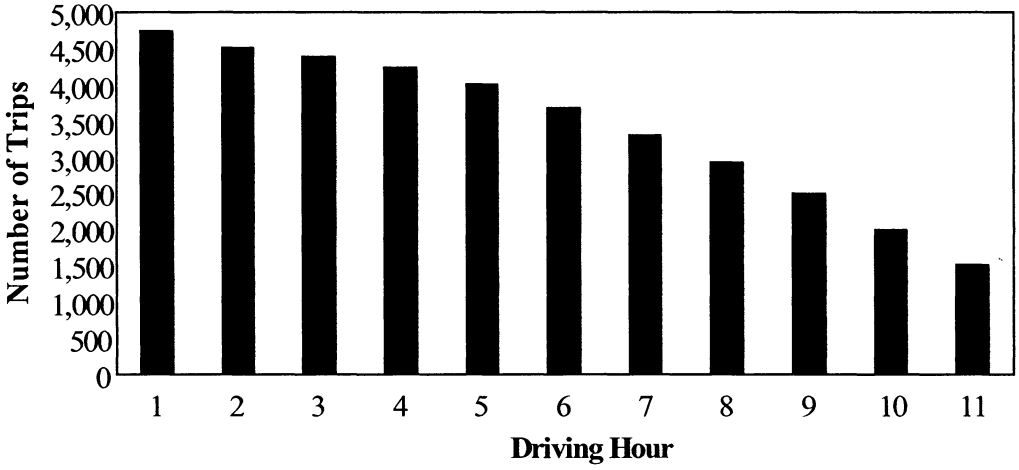
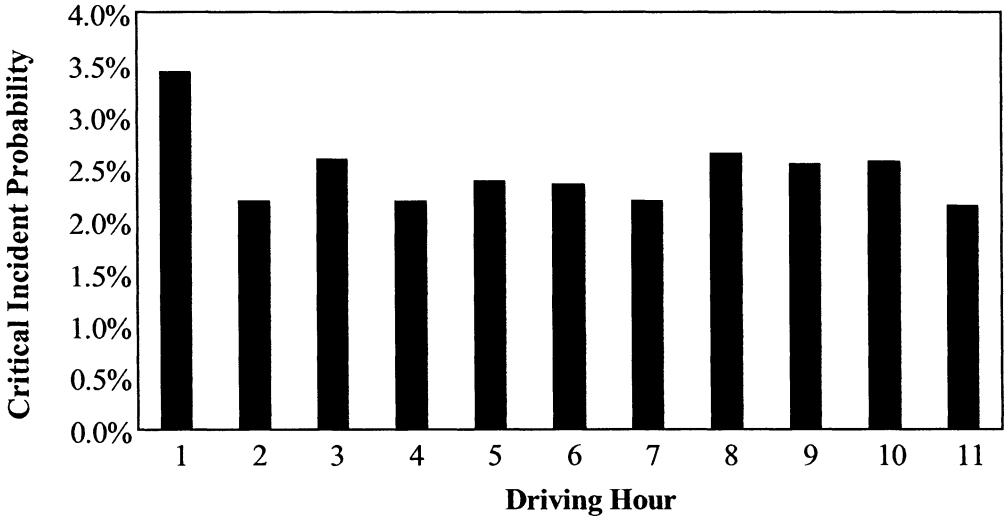


Figure 2 - Critical Incidents Relative Frequency as a Function of Driving Hour



Hours of Service Compliance Rates (2003 vs. 2006)

In addition to examining large truck crash data, FMCSA also examined motor carrier compliance rates with the HOS regulations over time via roadside inspection data collected and reported by States to FMCSA. Specifically, to examine changes in compliance rates with 49 CFR part 395 regulations before and after implementation of the HOS rules, FMCSA examined differences between CY2003 (the calendar year before implementation of the latest HOS rule) and CY2006 (the calendar year during which full implementation of the latest HOS rules would be reasonably expected and the latest full year of data available). Results, as seen in Table 3, indicate that the total number of driver inspections with HOS violations increased by 3 percent over this period (from 513,393 to 526,992). However, the total number of driver inspections conducted in CY2006 actually increased 8 percent from CY2003. As such, the total HOS violation rate (i.e., those driver inspections with at least one HOS violation divided by total number of driver inspections in that year) decreased from 17.4 percent in 2003 to only 16.5 percent in 2006.

TABLE 3.—DRIVER INSPECTIONS WITH HOS VIOLATIONS, NUMBER AND PERCENT CHANGE, CALENDAR YEAR 2003 AND CY2006

Part 395 (HOS) violation type	CY2003		CY2006		Growth rate
	Number	Percent *	Number	Percent *	Percent
Total Driver Inspections	2,958,598	NA	3,191,358	NA	8
Total Number of Inspections With HOS Violations	513,393	.....	526,992	.....	3

TABLE 3.—DRIVER INSPECTIONS WITH HOS VIOLATIONS, NUMBER AND PERCENT CHANGE, CALENDAR YEAR 2003 AND CY2006—Continued

Part 395 (HOS) violation type	CY2003		CY2006		Growth rate
	Number	Percent *	Number	Percent *	Percent
10 or 11 Hour Rule	63,773	12	55,268	10	−13
15 or 14 Hour Rule	12,905	3	90,489	17	601
60 or 70 Hour Rule	18,363	4	8,144	2	−56
No Log	46,379	9	43,926	8	−5
False Log (Out-Of-Service) Violation	22,501	4	25,149	5	12
False Log (Non-Out-Of-Service) Violation	13,465	3	11,390	2	−15
Form & Manner Violation	162,701	32	157,007	30	−3
Log Not Current	243,831	48	237,498	45	−3

* Percentage calculations for individual violations will add to more than 100 percent, as two separate HOS violations may be cited during a single inspection. As such, there is potential double counting, in that the single inspection is counted within both violation rows.

Driver Inspections defined as Level 1, 2, or 3 Level Inspection according to Commercial Vehicle Safety Alliance (CVSA) Commercial Driver Inspection Types.

Source: FMCSA Motor Carrier Management Information System, Snapshot October 2, 2007.

Inspections with violations of driving-time limits decreased by 13 percent during this time period. Inspections with violations of the 60-/70-hour rule decreased by approximately 56 percent over this period, as one would expect, given the availability of the 34-hour restart provision. In fact, six of the eight specific HOS violations cited at the roadside during this period decreased and only two increased. As for violations of the daily on-duty (14/15 hour) regulation and logbook falsifications, roadside inspection officials indicate that those citations increased mainly because inspectors can spot violations much more easily under the 2005 rule than they could under the pre-2003 HOS rule (which allowed for an extendable daily on-duty period via breaks). Under the 14-hour rule, safety inspectors need only identify the start of the workday and count to the 14th hour, unless the driver has a qualifying sleeper berth period of at least 8 but less than 10 hours. By contrast, under the former 15-hour rule, all miscellaneous off-duty periods had to be considered to potentially extend the window; this includes making a determination whether the period satisfied the requirements to be counted as off duty. The above data show overall improvements in compliance with the HOS regulations and provides additional evidence that overall safety performance has not been compromised by the 2003 and 2005 HOS rules.

2006 American Transportation Research Institute Safety Study

In 2006, ATRI designed a research study to provide empirical data on the safety impacts of the HOS rule. The ATRI study examined aggregated collision and driver injury data from motor carriers before and after implementation of the 2003 HOS rule. The study was significant because it involved 23 medium-to-large trucking fleets, roughly 100,000 commercial drivers and more than 10 billion vehicle miles of travel each year. The study population was comprised of ATA members and the fleets represented in the study included both for-hire and private fleets, as well as those operating in the truckload (TL) and less-than-truckload (LTL) segments. The participating carriers from the TL and LTL segments represented 16 and 15 percent, respectively, of all total industry activity in those segments. The study's final report, issued March 2006, indicates that the vast majority of trucks examined in the study were heavy trucks, or tractor-trailer combination units (those units with gross vehicle weight ratings above 26,000 pounds). Weighted results (i.e., based on averages of crashes and injuries divided by mileage for participating fleets) showed consistent and meaningful reductions in crash rates from before to after the 2003 rule became effective in January 2004. Specifically, the study found statistically significant reductions in the overall collision rate per million VMT (−3.7 percent), as well as reductions in the preventable collision rate (−4.8 percent), the driver injury rate (−12.6 percent), and the collision-related injury rate (−7.6 percent). Weighted averages were used in the study, meaning each fleet's contribution to the total rate was proportional to its mileage, and the study primarily examined rates, since those allow researchers to normalize any change in the number of large truck crashes by the total vehicle miles driven in those years. Further, these results are consistent with the trends in the FARS data described above.

Data from the ATRI safety study further support the position that overall safety of the motor carrier industry has been maintained since the 2003 and 2005 HOS rules became effective.

Carrier Safety Data Filed With ATA Motion

In addition to the data sets and studies discussed above, ATA filed a series of affidavits or declarations with the Court on September 6, 2007, with its motion for a stay of the Court's mandate. In those documents, ATA highlighted some of the recent safety experiences of its member trucking companies that have operated both before and after the new HOS rules. Although these affidavits are not necessarily a statistically representative sample of the effects of the new rulemakings on safety, their company experiences are consistent with the statistical results described above, and do represent some of the largest and most expansive trucking operations in the United States. Copies of the ATA motion and the complete affidavits and declarations of its member trucking companies that ATA included with its motion can be found in the docket referenced at the beginning of this notice. Schneider National Inc., the eighth largest for-hire trucking company in the United States based on revenues, operates approximately 12,000 over-the-road tractors and directly or indirectly employs more than 15,000 commercial drivers. According to Donald Osterberg,[5] Vice President of Safety and Driver Training, ''in almost every category assessed, Schneider [has] experienced improved safety performance under the current HOS

[5] See Tab I of the ATA Motion's Addendum to read Mr. Osterberg's declaration. It is in the docket referenced at the beginning of this notice.

rules (as compared with 2003 * * *). With regard to accidents that we describe as ''Ultra Major'' because they have potential liability exposure in excess of $250,000, our 2006 numbers were down 41.67% from our 2003 experience. Similarly, in 2006, our potential fatigue related crashes were down 27.39% as compared with 2003 * * *. Our fatigue related crashes as a percentage of total preventable crashes were down 17.85% in 2006 as compared with 2003. Our lost time injuries per 10,000 loads was down 24.14% in 2006 as compared with 2003 * * *. Our Ultra Major frequency per MM [million miles] was down 35.77% in 2006 as compared with 2003. Our fatigue related major crashes per MM was down 20.05% in 2006 as compared with 2003. And our preventable potential fatigue related crashes was down 9.55% in 2006 as compared with 2003.''

Mr. Greer Woodruff,[6] Senior Vice President for Safety and Security of J.B. Hunt, the tenth largest for-hire trucking company in 2006 based on revenues, stated:

During the three full years the new hours of service regulations have been in place (2004, 2005, and 2006), J.B. Hunt has seen a 4% decline in its preventable DOT recordable accident rate * * *. In addition, many accident types that could be fatigue related have seen a marked decline in a comparison of the same time frames: Jacknife—down 61.76%; Ran Traffic Control—down 24.53%; Rollaway—down 50%; and Roll Over—down 8.94%. Similarly, J.B. Hunt has seen a significant reduction in driver out-of-service rates related to hours of service in the comparative periods, an average 9.3% drop.

There were many additional affidavits from safety managers of large U.S.-based trucking companies who attested to the same positive impact on crash rates since the new HOS rules became effective. These statements are also generally consistent with FARS, TIFA, and other data analyzed by FMCSA, and all serve to consistently indicate that the operating environment since January 2004 under the new HOS rules is generally as safe or safer than the conditions before implementation of the 2003 rule.

Operational Data on 11-Hour Limit and 34-Hour Restart

To better understand how the motor carrier industry has implemented the 2005 HOS rule and to get a current update on the use of various provisions, FMCSA compiled and reviewed several new data sets on the industry's current use of the 34-hour restart provision and the 11th hour of driving, and on average weekly hours worked after implementation of the 2005 rule. Data compiled or reviewed were obtained from: (1) The 2005 and 2007 FMCSA Field Surveys; (2) ATA's operations survey of its members in 2007; and (3) industry operations data filed in the D.C. Circuit by ATA in 2007.

2005 and 2007 FMCSA Field Data Collection Efforts

In October 2007, FMCSA initiated a data collection effort by its field staff in connection with compliance reviews[7] and safety audits[8] to assess the specific operational ways the motor carrier industry has implemented and used the 2003/2005 HOS rule. The data collected were based upon the drivers' records of duty status or time records, and included the period April 2007 through November 2007. (Motor carriers are only required to maintain records of duty status for six months.) The data show that drivers are using the 11th hour of driving time somewhat more often than in the comparable 2005 survey, but few are using the full 11 hours of driving time and none are utilizing the maximum driving and on-duty time allowed by the rule. In addition, most drivers are taking restart periods that far exceed the 34-hour minimum.

The survey results are based upon data collected from a cross-section of industry in compliance reviews and safety audits; driver records from both private and for-hire motor carriers were included, as well as truckload and less-than-truckload carriers. A similar effort was undertaken in late 2004 and early 2005 and discussed in the 2005 HOS rule. A copy of the 2005 and the 2007 FMCSA field data collection reports are in the docket referenced at the beginning of this notice.

The most recent project was conducted in conjunction with normal motor carrier review activities during the period of October 22, 2007, to November 16, 2007, and where appropriate, results from the 2007 effort were compared to FMCSA's 2005 Field Survey results. To ensure the quality of the data collected, the Agency excluded drivers who were found to have falsified their records.

Overall, daily driving, weekly on-duty, and restart period data were collected from 1035 drivers operating for 337 motor carriers. The majority of the enforcement actions reviewed (70 percent) as part of this data collection effort consisted of compliance reviews; while 30 percent involved a safety audit. By comparison, in 2005, 81 percent of the activity involved a compliance review, with 19 percent representing safety audits. Of the carriers surveyed in the most recent effort, 90 percent were classified as for-hire motor carriers, while 10 percent were private carriers. In the 2005 effort, of the 269 motor carriers reviewed, 85 percent were for-hire carriers.

Of the drivers surveyed in 2007, 86 percent operated primarily beyond a 100 air-mile radius during the period reviewed, while 14 percent primarily operated within a 100 air-mile radius. By comparison, in 2005 approximately 80 percent of drivers reviewed were classified as over-the-road OTR drivers. It should be noted that in the 2005 effort, an over-the-road driver was defined as a driver who did not return to the terminal (work-reporting location) or home nightly. The definitions were changed slightly in 2007 to ''within'' and ''beyond'' a 100 air-mile radius to allow for a more explicitly defined difference between driver types. This made it easier for FMCSA investigators to catalogue drivers in one of two groups, and FMCSA Field managers believed the change in definitions would not significantly impact the data obtained in each of the two efforts.

Results: The data collected in the 2007 effort revealed the following:

Restart Period. Of the 1035 drivers included in the data collection, 869 drivers (84 percent) had at least one continuous off-duty period equal to or greater than 34 hours in length during the typical work week. Of the 542 drivers included in the 2005 survey, 393 (or 73 percent) of all drivers surveyed took at least one restart period during the period evaluated.

Looking at the length of all the restart periods recorded in the 2007 survey (1,925), 8 percent were exactly 34 hours, while 5 percent were between 34–36 hours, 22 percent were between 36 and 44 hours, and 65 percent exceeded 44 hours. The 2005 survey results were fairly similar, in that 5 percent of restart periods were exactly 34 hours, 6 percent were between 34–36 hours, 22 percent

[6] See Tab M of the ATA Motion's Addendum to read Mr. Woodruff's affidavit. It is in the docket referenced at the beginning of this notice.

[7] A compliance review is an in-depth review of a motor carrier's compliance with the Federal Motor Carrier Safety Regulations (49 CFR parts 380 to 399) and Hazardous Materials Regulations (49 CFR parts 100 to 180), as applicable. Motor carriers are selected for a compliance review based upon poor safety performance or receipt of a non-frivolous complaint, or in follow-up to previous compliance/enforcement actions.

[8] A safety audit, on the other hand, is a review of the carrier's safety-management practices and controls and is conducted within the first 18 months of the motor carrier beginning interstate operations. The safety audit is used to both educate the carrier and gather data to evaluate and determine whether the carrier has in place basic safety management controls to ensure safe operation of CMVs.

were between 36 and 44 hours, and 68 percent exceeded 44 hours, although it should be noted that the 2007 data indicates that 8 percent of periods are exactly 34 hours duration (versus 5 percent in 2005).

In 2007, FMCSA added a new variable to the data collection effort; specifically, the day of week that the restart period began. The distribution was as follows: 16 percent occurred on Monday, 10 percent on Tuesday, 10 percent on Wednesday, 11 percent on Thursday, 23 percent on Friday, 18 percent on Saturday, and 12 percent on Sunday. Thus, the 2007 data revealed that 53 percent of the restarts began between Friday and Sunday. Of these restart periods of 72 hours or less (or what is typically considered a ''true'' restart), the average number of hours each restart period is 49 hours. In other words, while the restart provision is being used by drivers, the average restart period is far longer than 34 hours.

11th Hour Driving. Of the 16,676 driving periods [9] reviewed in the 2007 effort, 27 percent involved the 11th hour of driving, while 4 percent involved driving beyond the 11th hour (in the last case, the daily driving hour limits either do not apply (e.g., drivers operating in intrastate commerce under State rules) or the drivers were in violation of the rule). In the 2005 effort, FMCSA found that approximately 17 percent of driving periods involved the 11th hour, while 4 percent of driving periods exceeded the 11th hour of driving.

Looking just at the driving periods of the ''beyond 100 air-mile'' drivers in the 2007 survey, FMCSA found that 27 percent of these driving periods involved the 11th hour of driving, with 4 percent involved driving beyond the 11th hour. The 2005 results showed that 23 percent of the driving periods of over-the-road drivers exceeded 10 hours.

The percentage of daily driving periods involving the 11th hour for the ''within 100 air mile'' drivers in the 2007 survey equaled 25 percent, with another 10 percent operating beyond the 11th hour, leading FMCSA to conclude that this sample of ''within 100 air mile'' drivers may not be representative of short-haul drivers in the industry overall.

Results from the 2007 FMCSA Field Survey are generally consistent with results from the 2005 effort, although driving in the 11th hour is somewhat higher in 2007 then in 2005 (i.e., 27 percent versus 17 percent). However, this is to be expected as the provision remains in place and available for use by industry over a longer time period.

ATA Operational Usage Survey of Members

ATA conducted a survey of its members in August 2007, requesting data on usage of two important provisions of the 2003/2005 HOS rule; namely, the availability of the 11th driving hour and the restart provision. A copy of the ATA survey is in the docket referenced at the beginning of this notice. Data compiled for the study was for the month of June 2007. Information was gathered from 69 motor carriers, representing several industry segments, most frequently the truckload and less-than-truckload segments. The number of drivers represented by these companies total approximately 234,000, or roughly 8 percent of the 3 million professional truck drivers that were estimated to be operating in the 2005 HOS regulatory impact analysis. The survey sample was considered to be quite large. The survey asked about usage of the 11th hour of driving by participating companies. Companies surveyed indicated that 46 percent of their drivers were using the 11th driving hour, and that the 11th driving hour was used an average of 8.42 times during the (30-day) month of June. To examine the number of daily trips by all drivers in the month of June that utilized the 11th hour of driving, we multiplied the 46 percent by 8.42 and arrived at an average daily use of the 11th driving hour by all drivers of 3.87 (or roughly 4) times per month. Dividing this result by 30 days in the month of June indicates that on average, 13 percent of daily trips utilized the 11th hour. Alternatively, one could divide by 22 working days in the month (i.e., assuming four 2-day weekend breaks during the month), which would indicate the 11th driving hour is used in 18 percent of daily driving trips.

For validation purposes, FMCSA compared the ATA results to those generated by the Agency in its regulatory impact analysis for the 2005 HOS rule. These results are generally consistent with the estimates derived from operational modeling conducted by FMCSA for the 2005 HOS regulatory impact analysis, which had estimated that 55 percent of commercial drivers used the 11th hour of driving in 28 percent of their daily on-duty periods, yielding an average use of the 11th driving hour in approximately 15 percent of trips.[10] Additionally, data from the 2005 FMCSA Field Survey indicated that the 11th driving hour was used in 16.2 percent of daily on-duty periods, while the FMCSA's 2007 Field Survey data revealed that 27 percent of daily on duty periods recorded by drivers utilized the 11th hour of driving. Data from Schneider National, Inc. indicated that the 11th hour was used in only 10.7 percent of daily on-duty periods. Compared with other estimates regarding use of the 11th driving hour, FMCSA finds the latest ATA results are generally consistent with earlier findings and reveal that the 11th hour is being used by commercial drivers for operational flexibility.

Regarding usage of the 34-hour restart, ATA survey respondents indicated that 65 percent of their drivers utilized the provision, and those that did, used it an average of 3.41 times per month. In its 2005 Field Survey data, FMCSA found that 73 percent of drivers used the restart provision at least once a week. It its 2007 Field Survey, FMCSA indicated that 90 percent of drivers included in the data collection had taken at least one extended off duty (restart) period of at least 34 hours, with the vast majority of drivers taking many more than the minimum 34 hours. In data collected prior to the 2005 rule, the OOIDA reported that almost 90 percent of drivers surveyed used the restart provision at least some of the time.[11] In a survey of private fleets in 2004, Stephen Burks reported that drivers for private carriers used the restart provision in 61 percent of their runs.[12] Depending on which specific source of data is used, the most recently published information regarding use of the restart provision is generally consistent with other information filed by researchers, associations, and others shortly before implementation of the 2005 HOS rule. The most recently published information regarding use of the restart provision indicates that industry is using the restart provision to provide operational flexibility.

[9] A driving period for this study was any work period after the driver had 10 or more consecutive hours off duty.

[10] In its regulatory impact analysis accompanying the 2005 HOS Rule, and as part of a broader sensitivity analysis, FMCSA also assumed higher usage levels of the 11th driving hour to determine the impact of its assumptions on the cost-benefit analysis results. Regardless of the assumptions made regarding usage of the 11th hour of driving, FMCSA found that eliminating the 11th hour driving provision was not cost beneficial.

[11] John H. Siebert, ''A Survey of Owner-Operators and Company Drivers on their Use of Three New 'Hours of Service Features,' '' OOIDA Foundation, September 15, 2004.

[12] Stephen V. Burks, A Survey of Private Fleets on their Use of Three New 'Hours of Service Features,' '' September 15, 2004.

Carrier Information Filed With ATA Motion

Mr. Greer Woodruff,[13] Senior Vice President of J.B. Hunt, stated in an affidavit filed with ATA's Motion for Stay with the D.C. Circuit, that ''In terms of usage, J.B. Hunt drivers engaged in nationwide truckload operations on average use the 11th hour or some portion of it about 10.8% of their daily driving days (approximately 3 times per month). When used, the operations within the 11th hour averaged approximately 40 minutes. While this number is relatively modest, the importance of the availability of the 11th hour for scheduling purposes cannot be overstated.'' Mr. Tom Anderson,[14] Director of Safety and Training for Interstate Distributor Company (IDC), a large truckload carrier based in Tacoma, Washington, attested to similar usage of the 11th driving when he filed his declaration. In a random audit of 300 company drivers, Mr. Anderson states that his drivers used the 11th driving hour only 3.1 to 3.7 times per month, or that consistent with J.B. Hunt's usage of the provision and other estimates mentioned earlier in this section. Also, Mr. Woodruff of J.B. Hunt states that, ''The 11th hour has allowed J.B. Hunt and our drivers to more efficiently use their daily drive time with only a modest increase (about 1.8%) in average daily driving hours and with less concern about an hours-of-service violation or being stranded in an inappropriate location.'' The information submitted by Mr. Woodruff regarding use of the 11th driving hour is consistent with estimates from other sources and those used in the 2005 RIA for the HOS rule, as discussed in earlier sections of this preamble. All of these data indicate that the 11th driving hour in particular is an important provision to the industry in terms of allowing drivers to maintain operational flexibility.

FMCSA Decision to Re-Adopt the 11-Hour Limit and 34-Hour Restart

FMCSA concludes it is necessary to re-adopt the 11-hour driving limit and 34-hour restart provisions to avoid significant and costly disruption of existing industry practices while ensuring that the actions and underlying safety analysis are available for comments from all interested parties before issuing a final rule. The Agency made this decision based on its evaluation of new safety and operational data, additional analysis and modeling of the relationship between hours of driving and fatigue-related large truck crashes, discussion of the concept of cumulative fatigue in the context of driving activity, and the collection and evaluation of new data on the benefits and costs of the 11-hour driving limit and the 34-hour restart provisions, and the affidavits and declarations from some of America's largest trucking companies.

G. Regulatory Analyses and Notices

Administrative Procedure Act. The FMCSA has determined that it has good cause under 5 U.S.C. 553(b) to adopt this interim final rule without prior notice and opportunity for comment and under 5 U.S.C. 553(d) to make the IFR final less than 30 days after publication. Specifically, the agency finds that notice and comment are both ''impracticable'' and ''contrary to the public interest'' pursuant to § 553(b). In order to avoid the huge administrative and operational burden that would be imposed on State enforcement agencies and motor carriers and drivers by the issuance of the Court's mandate at the end of December, this rule must be issued without normal notice and comment procedures. In addition, the variety of State HOS standards that would exist in the absence of this IFR, along with the influx of the 106,000 additional drivers that FMCSA estimates will be needed to handle current freight volume, could offset safety gains made since 2003 (as identified in section F of this IFR), which would obviously be contrary to the public interest.

The 2005 rule includes a provision stating that ''[a]ny regulations on hours of service of drivers in effect before April 28, 2003, which were amended or replaced by the final rule adopted on April 28, 2003 [69 FR 22456] are rescinded and not in effect'' (§ 395.0). Because the D.C. Circuit did not address the meaning of this provision, either in *OOIDA* v. *FMCSA* or in its order responding to FMCSA's support of ATA's motion for a stay, the interaction between § 395.0 and the law of the Circuit has created significant doubt whether any daily driving limit would exist when the Court's mandate issues. The Agency must now adopt an IFR to forestall the confusion and uncertainty that would otherwise occur within the motor carrier industry, interfering with efforts to restore an orderly HOS regime.

There are precedents in the D.C. Circuit for the proposition that vacatur of a rule leaves a vacuum which the Agency must fill. There are other precedents holding that vacatur automatically restores the prior rule, if any. It is therefore unclear—absent an IFR—whether there would be any daily driving limit in effect when the Court's mandate issues, since § 395.0 rescinded all pre-2003 daily driving limits, or whether the limit would be 10 hours. (The 34-hour restart provision would necessarily disappear upon issuance of the Court's mandate because there was no restart rule in effect before April 28, 2003, that could be rescinded by § 395.0 or restored by the Court's decision.) The problem is further complicated by the fact that, after the D.C. Circuit vacated the entire 2003 rule [*Public Citizen* v. *FMCSA*, 374 F.3d 1209 (D.C. Cir. 2004)], Congress restored the vacated rule until FMCSA issued a new rule addressing the issues raised by the Court's 2004 decision, or September 30, 2005, whichever occurred first. [Section 7(f) of the Surface Transportation Extension Act of 2004, Part V, Public Law 108–310, 118 Stat. 1144, at 1154.] The meaning of the D.C. Circuit precedents restoring a prior rule upon vacatur of a challenged provision is unclear when, as here, the daily driving limit immediately preceding the 11-hour limit adopted by FMCSA in 2005 and vacated in 2007, was the same 11-hour limit (restored by the Surface Transportation Extension Act).

FMCSA has therefore determined that it would be contrary to the public interest not to issue an IFR that forestalls the confusion attendant upon issuance of the Court's mandate and establishes clearly the HOS rules drivers and motor carriers must follow.

Neither FMCSA and its State enforcement partners nor the motor carrier industry could adapt quickly enough to a 1-hour reduction in driving time and elimination of the 34-hour restart at the end of the stay granted by the Court to ensure orderly enforcement and compliance. Both the enforcement community and the regulated entities need a substantial amount of time to come to terms with such significant changes in the HOS rules, especially changes that make enforcement more complex and compliance more expensive.

Furthermore, after committing substantial resources to reviewing recent safety data following the Court's September 28 stay, FMCSA has become convinced that reversion to a prior regulatory regime (and possibly no regulation at all) would likely offset some of the large-truck safety gains made on America's highways since 2003 and that an IFR is needed to preserve

[13] See Tab M of the ATA Motion's Addendum to read Mr. Woodruff's affidavit. It is in the docket referenced at the beginning of this notice.

[14] See Tab B of the ATA Motion's Addendum to read Mr. Anderson's affidavit. It is in the docket referenced at the beginning of this notice.

the current rules while seeking public comment.

Millions of CMV drivers are subject to FMCSA's HOS rules. Because the Agency's enforcement staff is relatively small, adequate enforcement of the rules requires partnership with State officials through the Motor Carrier Safety Assistance Program (MCSAP) [49 CFR part 350]. FMCSA provides annual MCSAP grants to States that agree to adopt and enforce as State laws or regulations, motor carrier safety regulations which are compatible with the FMCSRs. For State safety regulations applicable to CMVs operating in interstate commerce, ''compatible'' regulations must be identical to, or have the same effect as, the FMCSRs. All of the States, the District of Columbia, Puerto Rico, and the U.S. Territories accept MCSAP funds and enforce compatible laws or regulations, including hours-of-service rules. The States have approximately 10,000 officers available for enforcement of State safety regulations compatible with the FMCSRs. These officers account for 95% of FMCSA's available enforcement resources; they conduct 96% (3.1 million) of the roadside inspections per year.

MCSAP grantees use different methods of adopting compatible laws and regulations: Of the 50 States and the District of Columbia, 23 jurisdictions automatically adopt any FMCSA safety rule as a State regulation, 22 use an administrative process, and 6 require action by the State legislature. In order to accommodate these various adoption methods, 49 CFR 350.331(d) of the MCSAP rules allow States 3 full years after the effective date of an FMCSA to rule to adopt a compatible State rule. States typically adopt safety-related rules as soon as possible, but adoption is not simultaneous among the States.

When FMCSA promulgated a new hours-of-service rule on April 23, 2003, it adopted a compliance date of January 4, 2004, more than 8 months after its publication. More than 9,000 State enforcement officers were trained on the requirements of the new hours-of-service rule between October and the end of December 2003, either by FMCSA directly or by State personnel trained by FMCSA. States amended their operations manuals and enforcement guidelines to implement the new rules. Similarly, FMCSA and the States reprogrammed computers as necessary to ensure that hand-held devices used at roadside and office systems tracked the new HOS rules.

The same process would be needed to prepare for enforcement of an HOS rule with a 10-hour driving limit and without 34-hour restart provision. States that use administrative or legislative processes to adopt safety regulations compatible with Federal regulations would require an amount of time similar to that required to adopt new hours-of-service regulations. Additionally, all of the officers trained on the 11-hour driving limit and the 34-hour restart provision in the fall and early winter of 2003 would have to be re-trained on the previous rules. Experienced officers may be able to adapt to the previous rules without much difficulty, but newly hired officers who have never worked with the previous regulatory regime would require full-scale training. State agencies would have to amend, print, and distribute manuals and enforcement guidelines before re-training could begin. Computers—both the hand-held devices often used at roadside and the larger machines used by the central office of the enforcement agency—would have to be re-programmed.

Enforcement would suffer during the transition period. Re-training would take officers away from their safety activities at roadside. Officers would need to work overtime to maintain the same level of enforcement, or those activities would have to be reduced for a time, with the result that unsafe motor carriers and drivers would have a better chance of escaping detection.

If the provisions of the pre-2003 hours-of-service rules were reinstated after the stay expires, nationwide enforcement would be far from uniform. Some States would automatically adopt the Federal rule (but even their officers would require re-training before enforcement could begin), while others would continue to operate under the 2005 rule until the State legislature acted or an administrative process was completed. The resulting nationwide patchwork of regulations would render effective enforcement problematic.

In view of the legal challenges to Federal hours-of-service rules in the last few years, States may be less inclined to adopt the latest Federal rule quickly, preferring to wait and see whether further changes are made that would affect their training and enforcement. The pattern of State hours-of-service regulations could therefore change from month to month, and might remain inconsistent for up to three full years as allowed by 49 CFR 350.331(d). The patchwork of regulations would create uncertainty about the HOS standard applicable during a trip. In fact, a driver could be subject to several different State rules in the course of a few hours. Adding to the confusion is the fact that FMCSA would have to evaluate driver HOS records under the rules mandated by the Court's decision during compliance reviews of motor carriers, while driver HOS records would be evaluated under State regulations at roadside inspections in States that do not immediately conform their rules to the Federal standard.

The extent to which the 11-hour driving limit and the 34-hour restart are being used varies widely among industry segments, motor carriers, and individual drivers, but the sudden loss of these provisions would have a noticeable effect on many carriers and drivers and a substantial impact on some. We estimated that the loss of the 11-hour driving limit and the 34-hour restart would cost the industry about $2.1 billion per year, of which $1.6 billion would be attributable to the 34-hour restart and $500 million to the 11th hour of driving. See RIA in the docket for more details. By subtracting the estimated $125 million of safety benefits, the net annual cost to the industry would be approximately $2 billion. This cost is due to a 7 percent reduction in labor productivity for motor carriers due to loss of the 11th driving hour and the 34-hour restart provision. In the absence of an IFR, all motor carriers would have to revise their operational procedures immediately and many would have to purchase new equipment and hire more drivers (FMCSA estimates 106,000 additional drivers in the RIA), a significant burden in a huge and diverse industry. This would imply that the 106,000 additional drivers would cause additional congestion on America's highways.

In an affidavit filed with the D.C. Circuit with ATA's motion for stay of the mandate in *OOIDA* v. *FMCSA*, the Senior Vice President of Corporate Safety and Security for J.B. Hunt, the 11th largest for-hire motor carrier in the industry in 2006, estimated that it would take his company ''a minimum of 6 months * * * to make a proper transition to an hours of service regulation that does not include the 11 and 34 hour provisions, including time to undertake computer programming changes, system testing, engineering design and simulations, education of shippers/receivers, training of over 13,500 drivers and 2,000 non-driver personnel, hiring of additional drivers and the acquisition of additional equipment'' (Greer Woodruff,[15] September 4, 2007).

[15] See Tab M of the ATA Motion's Addendum to read Mr. Woodruff's affidavit. It is in the docket referenced at the beginning of this notice.

The Executive Vice President of PeopleNet, which offers trucking customers an electronic system for maintaining and tracking driver logs, also filed an affidavit with the ATA petition. He reported that, ''[e]ven with the leading edge technology platform that PeopleNet manages and the patented, Over-The-Air-Programming technology that allows for expedient deployment of code to all Onboard users, it would take approximately four to six months to design, test, and roll-out new software that is fully compliant with the elimination of the 34-hour restart provision and the eleven hour permitted driving time and provides the driver with the needed compliance assistance provided today'' (Brian McLaughlin,[16] September 6, 2007).

Old Dominion Freight Lines, which redesigned its operations to better utilize the rules adopted in 2003, reported that elimination of the 34-hour restart for its pickup and delivery drivers could lead to ''increased labor needs of 20% or in Old Dominion's case require the recruiting, hiring and training of over 600 drivers. In our industry the safety record of new drivers in their first year of work is not as good as that of experienced drivers. In 2006, Old Dominion had 1,971 accidents. Drivers in their first year made up 12% of the driver workforce, yet they had 526 or 27% of the total accidents'' (Affidavit, Brian J. Stoddard,[17] August 31, 2007). The Frozen Food Express Group (FFEG) made the same point: ''FFEG's experience shows that drivers in their first year of driving are about 3 times more likely than a veteran driver to be involved in an accident'' (Affidavit, David Hedgepeth,[18] September 4, 2007).

The transportation manager for Cemex, the largest cement manufacturer in North America, reported that its drivers use the 34-hour restart to ''re-set'' their clocks during bad weather, when concrete cannot be poured. ''Because the elimination of the 34-hour restart provision would curtail the flexibility that Cemex needs to supply its customers, Cemex would need to hire additional truck drivers if that provision were eliminated. It is very difficult to find good, qualified drivers, and Cemex would not be the only company competing for these limited driver resources. * * * The third-party carriers that Cemex uses to ship some of its cement would also be affected by the 34-hour restart provision. Those carriers would be competing with Cemex to hire additional drivers'' (Affidavit, George Caine,[19] September 5, 2007).

FMCSA believes that the problems described by J.B. Hunt, PeopleNet, Old Dominion, and Cemex would affect most motor carriers, in varying degree. All carriers would need to retrain drivers and support personnel if the driving time-limit were immediately reduced to 10 hours and the 34-hour restart were eliminated. Technological changes would be more burdensome for carriers that have invested heavily in computer-based management, tracking and communications systems. The need for new drivers and vehicles to handle the existing workload would depend on the extent to which a carrier and its drivers had utilized the 11-hour driving limit and the 34-hour restart. Despite uncertainties, FMCSA believes that all of these challenges would occur and that they would be seriously disruptive if they converged at the end of the 90-day stay granted by the Court.

As demonstrated elsewhere in the preamble, this rule fully addresses the legal shortcomings identified in *OOIDA* v. *FMCSA*. Because the Court did not vacate the 11-hour driving limit or the 34-hour restart for reasons related to safety, but only because of procedural flaws, FMCSA's resolution of those flaws in this rule, combined with the impracticability of immediately establishing, enforcing, and complying with a new regulatory regime upon expiration of the Court's 90-day stay, compels the conclusion that the Agency has good cause to issue this rule without prior notice and comment. Motor carriers that need more drivers to compensate for reduced driving time may not be able to find them, and even if new drivers are located, their inexperience may cause additional crashes and offset gains made in highway safety since 2003. The crash and compliance data that has become available since the 2005 HOS rule was issued show that operational safety under the 2003/2005 rules have not been degraded and in some cases, data indicate improvement. Furthermore, the degree of disruption to the motor carrier industry caused by a sudden, major regulatory change could be serious enough to interfere with the timely delivery of some products. That risk is greater today than at any time in the past because of the widespread use in the American economy of ''just-in-time'' delivery as a method of reducing the overhead costs associated with warehousing. Disruptions in the supply chain caused by truckers' inability immediately to comply with a new HOS rule, to say nothing of an increase in crashes and congestion associated with 106,000 inexperienced drivers hired to satisfy a new HOS rule, would be contrary to the public interest, especially when the economy is already fragile due to the decline in housing starts and the financial pressure caused by non-performing subprime mortgages.

The disruption to enforcement, operations, and compliance that justify an IFR also provide good cause to make the IFR final upon publication, before the end of the 90-day stay.

Congressional Review Act

Because FMCSA has determined that it has good cause under 5 U.S.C. 553(b) to adopt this rule without prior notice and opportunity for comment, the 60-day delay required by the Congressional Review Act before a major rule can become effective [see 5 U.S.C. 801(a)(3)] is not applicable and this rule can take effect on a date determined by the Agency [see 5 U.S.C. 808(2)]. FMCSA has established December 27, 2007, as the effective date of this rule.

Executive Order 12866

The FMCSA has determined that this action is an economically significant regulatory action within the meaning of Executive Order 12866, This interim rule reinstates those provisions vacated by the Court as of December 27, 2007. The Agency has prepared a regulatory impact analysis analyzing the interim rule. A copy of the regulatory analysis document is included in the docket referenced at the beginning of this notice. The Office of Management and Budget (OMB) has reviewed this document.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this interim final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. However, FMCSA believes the RFA impacts of this IFR were adequately described by the 2005 final rule.

[16] See Tab G of the ATA Motion's Addendum to read Mr. McLaughlin's declaration. It is in the docket referenced at the beginning of this notice.

[17] See Tab K of the ATA Motion's Addendum to read Mr. Stoddard's affidavit. It is in the docket referenced at the beginning of this notice.

[18] See Tab E of the ATA Motion's Addendum to read Mr. Hedgepeth's affidavit. It is in the docket referenced at the beginning of this notice.

[19] See Tab D of the ATA Motion's Addendum to read Mr. Caine's declaration. It is in the docket referenced at the beginning of this notice.

Unfunded Mandates Reform Act of 1995

This IFR will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year.

Paperwork Reduction Act

This final rule does not alter the existing information collection requests for HOS recordkeeping.

National Environmental Policy Act

FMCSA has prepared an environmental assessment (EA) in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*, as amended), the FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1),[20] the Council on Environmental Quality Regulations (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508), the DOT Order 5610.C (September 18, 1979, as amended on July 13, 1982 and July 30, 1985), entitled ''Procedures for Considering Environmental Impacts,'' and other pertinent environmental regulations, Executive Orders, statutes, and laws for consideration of environmental impacts of FMCSA actions. The Agency relies on all of the authorities noted above to ensure that it actively incorporates environmental considerations into informed decisionmaking on all of its actions, including rulemaking.

As shown in the Environmental Assessment that accompanies this IFR, none of the alternatives considered would have a significant adverse impact on the human environment. Subsequently, FMCSA has determined that this IFR will not significantly affect the quality of the human environment and that a comprehensive Environmental Impact Statement is not required. The EA for this IFR, as well as the Agency's finding of no significant impact (FONSI), are contained in the docket referenced at the beginning of this notice.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA has determined this rule does not have a substantial direct effect on States, nor would it limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

List of References

Most of the research studies cited in this interim rule are included in the List of References in the 2005 final rule (70 FR 49978, at 50067). Copies or abstracts of the 2005 referenced studies, as well as newer research studies published after the 2005 rule, new safety and operational data, affidavits and declaration of trucking company executives, and the Regulatory Impact Analysis cited in this interim rule are in the docket referenced at the beginning of this notice.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, FMCSA is amending 49 CFR parts 385 and 395 as follows.

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 2. In Appendix B to part 385—

■ a. Amend section II by removing paragraph (c);

■ b. Amend section VII by removing the entries for §§ 395.3(a)(1), 395.3(c)(1), and 395.3 (c)(2);

■ c. Amend section II by adding paragraph (c);

■ d. Amend section VII by adding entries for §§ 395.3(a)(1), § 395.3(c)(1), and (c)(2) to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

II. Converting CR Information Into a Safety Rating

* * * * *

(c) Critical regulations are those identified as such where noncompliance relates to management and/or operational controls. These are indicative of breakdowns in a carrier's management controls. An example of a critical regulation is § 395.3(a)(1), requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours.

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 395.3(a)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours (critical).

* * * * *

§ 395.3(c)(1) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 7 consecutive days without taking an off-duty period of 34 or more consecutive hours (critical).

§ 395.3(c)(2) Requiring or permitting a property-carrying commercial motor vehicle driver to restart a period of 8 consecutive days without taking an off-duty period of 34 or more consecutive hours (critical).

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 3. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, 31502; Sec. 229, Pub. L. 106–159, 113 Stat. 1748; Sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

■ 4. In § 395.1—

■ a. Remove paragraphs (e)(1)(iv)(A), (e)(2)(v), (g)(1)(i)(B), (g)(1)(ii)(B), (g)(2)(ii), and (o)(3).

■ b. Add paragraphs (e)(1)(iv)(A), (e)(2)(v), (g)(1)(i)(B), (g)(1)(ii)(B), (g)(2)(ii), and (o)(3) to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(e) * * *

(1) * * *

(iv)(A) A property-carrying commercial motor vehicle driver does not exceed 11 hours maximum driving

[20] FMCSA's environmental procedures were published on March 1, 2004 (69 FR 9680), FMCSA Order 5610.1, National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, and effective on March 30, 2004.

time following 10 consecutive hours off-duty; or

* * * * *

(2) * * *

(v) The driver does not drive more than 11 hours following at least 10 consecutive hours off-duty;

* * * * *

(g) * * *

(1) * * *

(i) * * *

(B) May not drive more than 11 hours following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(*1*) through (*4*) of this section; and

* * * * *

(ii) * * *

(B) Calculation of the 11-hour driving limit includes all driving time; compliance must be re-calculated from the end of the first of the two periods used to comply with paragraph (g)(1)(ii)(A) of this section.

* * * * *

(2) * * *

(ii) The driving time in the period immediately before and after each rest period, when added together, does not exceed 11 hours;

* * * * *

(o) * * *

(3) The driver has not taken this exemption within the previous 6 consecutive days, except when the driver has begun a new 7- or 8-consecutive day period with the beginning of any off-duty period of 34 or more consecutive hours as allowed by § 395.3(c).

* * * * *

■ 5. In § 395.3—

■ a. Remove paragraphs (a)(1) and (c).

■ b. Add paragraphs (a)(1) and (c) to read as follows:

§ 395.3 Maximum driving time for property-carrying vehicles.

* * * * *

(a) * * *

(1) More than 11 cumulative hours following 10 consecutive hours off-duty;

* * * * *

(c)(1) Any period of 7 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(2) Any period of 8 consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

Dated: December 10, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–24238 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register

Vol. 72, No. 241

Monday, December 17, 2007

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0333; Directorate Identifier 2007–NM–236–AD]

RIN 2120–AA64

Airworthiness Directives; SAAB Model SF340A and Model 340B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) * * * [which] required * * * [conducting] a design review against explosion risks.

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 16, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0333; Directorate Identifier 2007–NM–236–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0170, dated June 15, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) in June 2001.
>
> In their Letters referenced 04/00/02/07/01–L296 dated March 4, 2002 and 04/00/02/07/03–L024, dated February 3, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).
>
> Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1, 1958, are required to conduct a design review against explosion risks.
>
> This Airworthiness Directive, which renders mandatory the modification [3162] to separate wiring of Fuel Quantity Indication System [FQIS], is a consequence of the design review.

Modification 3162 includes parking (stowing) of the existing wiring to the FQIS, installing new wires with shields to the FQIS, and operational and functional tests of the FQIS. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design

holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Saab has issued Service Bulletin 340–28–024, dated February 26, 2007; and Revision 01, dated May 21, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 218 products of U.S. registry. We also estimate that it would take about 80 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $12,900 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,207,400, or $19,300 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket No. FAA–2007–0333; Directorate Identifier 2007–NM–236–AD.

Comments Due Date

(a) We must receive comments by January 16, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SAAB Model SF340A and Model 340B airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA has published Special Federal Aviation Regulation 88 (SFAR88) in June 2001.

In their Letters referenced 04/00/02/07/01–L296 dated March 4, 2002 and 04/00/02/07/03–L024, dated February 3, 2003, the JAA (Joint Aviation Authorities) recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 7,500 pounds (3402 kg) or more, which have received their certification since January 1, 1958, are required to conduct a design review against explosion risks.

This Airworthiness Directive, which renders mandatory the modification [3162] to separate wiring of Fuel Quantity Indication System, is a consequence of the design review.

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. Modification 3162 includes parking (stowing) of the existing wiring to the FQIS, installing new wires with shields to the FQIS, and operational and functional tests of the FQIS.

Actions and Compliance

(f) Within 72 months after the effective date of this AD, unless already done, do modification 3162 in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–28–024, Revision 01, dated May 21, 2007. Actions done before the effective date of this AD in accordance with Saab Service Bulletin 340–28–024, February 26, 2007, are considered acceptable for compliance with the requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0170, dated June 15, 2007; and Saab Service Bulletin 340–28–024, Revision 01, dated May 21, 2007; for related information.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24326 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0335; Directorate Identifier 2007–NM–292–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

The assessment and lightning tests showed that certain fuel tube self-bonded couplings do not provide sufficient lightning current capability. The assessment also showed that single failure of the integral bonding wire of the self-bonded couplings or excessive axial clearance at the reducer ferrules of certain self-bonded couplings could affect electrical bonding between fuel tubes.

Insufficient electrical bonding between fuel tubes or insufficient current capability of fuel tube couplings, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion. * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 16, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0335; Directorate Identifier 2007–NM–292–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2007–23, dated October 18, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the CL 600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.
>
> The assessment and lightning tests showed that certain fuel tube self-bonded couplings do not provide sufficient lightning current capability. The assessment also showed that single failure of the integral bonding wire of the self-bonded couplings or excessive axial clearance at the reducer ferrules of certain self-bonded couplings could affect electrical bonding between fuel tubes.
>
> Insufficient electrical bonding between fuel tubes or insufficient current capability of fuel tube couplings, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion. To correct the unsafe condition, this directive mandates the replacement of certain fuel tube couplings with redesigned couplings.

For certain couplings, the replacement includes a detailed inspection for wear of the sleeve and coupling and applicable corrective actions (including installing new O-rings and sleeves). You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin 601R–28–054, Revision A, dated August 7, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 692 products of U.S. registry. We also estimate that it would take about 21 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2,417 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,835,124, or $4,097 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2007–0335; Directorate Identifier 2007–NM–292–AD.

Comments Due Date

(a) We must receive comments by January 16, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7067, and 7069 through 7981.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

The assessment and lightning tests showed that certain fuel tube self-bonded couplings do not provide sufficient lightning current capability. The assessment also showed that single failure of the integral bonding wire of the self-bonded couplings or excessive axial clearance at the reducer ferrules of certain self-bonded couplings could affect electrical bonding between fuel tubes.

Insufficient electrical bonding between fuel tubes or insufficient current capability of fuel tube couplings, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion. To correct the unsafe condition, this directive mandates the replacement of certain fuel tube couplings with redesigned couplings.

For certain couplings, the replacement includes a detailed inspection for wear of the sleeve and coupling and applicable corrective actions (including installing new O-rings and sleeves).

Actions and Compliance

(f) Within 5000 flight hours after the effective date of this AD, unless already done, replace fuel tube couplings inside the wing and centre fuel tanks with redesigned couplings, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–054, Revision A, dated August 7, 2006. Do all applicable inspections and corrective actions before further flight.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–23, dated October 18, 2007, and Bombardier Service Bulletin 601R–28–054, Revision A, dated August 7, 2006, for related information.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24327 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0339; Directorate Identifier 2007–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

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 all Boeing Model 757 airplanes. This proposed AD would require repetitive inspections of the anchor tab of the bulkhead seal assemblies of the wing thermal anti-ice (TAI) system for cracks

at certain outboard stations of the left and right wings, and corrective action if necessary. This proposed AD also provides optional terminating action for the repetitive inspections. This proposed AD results from reports of cracks found at the anchor tab of the bulkhead seal assemblies of the wing TAI system. In one incident the anchor tab and bulkhead seal assembly had separated because of the cracks. We are proposing this AD to prevent failure of the anchor tab of the bulkhead seal assembly, which in icing conditions could result in insufficient airflow to the wing TAI system, subsequent ice on the wings, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 31, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6477; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0339; Directorate Identifier 2007–NM–182–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracks found at the anchor tab of the bulkhead seal assemblies of the wing thermal anti-ice (TAI) system on Boeing Model 757 airplanes. In one incident the anchor tab and bulkhead seal assembly had separated because of the cracks. The anchor tab of the bulkhead seal assembly was held in position with a bolt. If the anchor tab fails, the TAI spray tube disconnects from the TAI duct, and it could not supply sufficient airflow for the wing TAI system. If the flight is in icing conditions and there is insufficient airflow, it could cause ice to form on the wings. These conditions, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletins 757–30–0021 and 757–30–0022, both Revision 1, both dated June 13, 2007. The service bulletins describe procedures for repetitive detailed inspections for cracks of the anchor tab of the bulkhead seal assemblies of the wing TAI system at certain outboard stations of the left and right wings, and corrective action before further flight if necessary. The compliance time specified in the service bulletin for the initial inspection is before the accumulation of 20,000 total flight hours or within 36 months from the effective date on the service bulletin, whichever occurs later.

The corrective action includes replacing the bulkhead seal assembly or installing new duct anchor support brackets if cracks are found. If the bulkhead seal assembly is replaced, but new support brackets are not installed, the inspections must be repeated until the existing brackets are replaced. Replacing the support brackets eliminates the need for the repetitive inspections. The compliance time for the repetitive inspections is at intervals not to exceed 6,000 flight hours; for airplanes on which the bulkhead seal assemblies are replaced, the inspection is repeated within 20,000 flight hours after the replacement, and thereafter at intervals not to exceed 6,000 flight hours.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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 airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 929 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 530 airplanes of U.S. registry. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $84,800, or $160 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–0339; Directorate Identifier 2007–NM–182–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 31, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracks found at the anchor tab of the bulkhead seal assemblies of the wing thermal anti-ice (TAI) system. In one incident the anchor tab and bulkhead seal assembly had separated because of the cracks. We are issuing this AD to prevent failure of the anchor tab of the bulkhead seal assembly, which in icing conditions could result in insufficient airflow to the wing TAI system, subsequent ice on the wings, and consequent reduced controllability of the airplane.

Compliance

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

Repetitive Inspections/Corrective Action

(f) At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–30–0021 or 757–30–0022, both Revision 1, both dated June 13, 2007, as applicable; except where the service bulletins specify starting the compliance time ''* * * from the date on this service bulletin,'' this AD requires starting the compliance time from the effective date of this AD: Perform detailed inspections for cracks of the anchor tab of the bulkhead seal assemblies of the wing TAI system at certain outboard stations of the left and right wings by doing all the actions, including all applicable corrective actions, in accordance with the Accomplishment Instructions of the applicable service bulletin. Do all applicable corrective actions before further flight.

Optional Terminating Action

(g) Installing a new duct anchor support bracket adjacent to the bulkhead seal assemblies in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–30–0021 or 757–30–0022, both Revision 1, both dated June 13, 2007, as applicable, ends the repetitive inspections required by paragraph (f) of this AD.

Credit for Actions Done According to Previous Issues of Service Information

(h) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletins 757–30–0021 and 757–30–0022, both dated August 15, 2006, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24329 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0270; Directorate Identifier 2007–NM–211–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

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 certain Boeing Model 757–200, –200PF, and –200CB series airplanes. This proposed AD would require doing an ultrasound inspection for disbonded tear straps not mechanically fastened to the skin, and related investigative and corrective actions, if necessary. This proposed AD results from reports indicating that bonded skin panels may not have been correctly anodized in phosphoric acid before the tear strap doubler was bonded to the skin. We are proposing this AD to detect and correct a weak bond between the skin and tear strap. Such disbonding could reduce the ability of the skin to resist cracks and could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 31, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6449; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0270; Directorate Identifier 2007–NM–211–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports indicating that bonded skin panels may not have been correctly anodized in phosphoric acid before the tear strap doubler was bonded to the skin between stations 439 to 900, and 1180 to 1621, and between stringers 10 left and 10 right, on Boeing Model 757–200, –200PF, and –200CB series airplanes. The cause of the disbonded tear straps has been attributed to a manufacturing process error. A weak bond between the skin and tear strap, if not corrected, could reduce the ability of the skin to resist cracks and could adversely affect the structural integrity of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007. The service bulletin describes procedures for doing an ultrasound inspection for disbonded tear straps not mechanically fastened to the skin between stations 439 to 900, and 1180 to 1621, and between stringers 10 left and 10 right, and doing applicable related investigative and corrective actions. The related investigative actions include doing a high frequency eddy current inspection to detect cracks around the fasteners, and doing a low frequency eddy current inspection to detect corrosion on the surface, as applicable. The corrective actions include installing rivets to repair disbonding, and contacting Boeing for crack and/or corrosion repair, as applicable.

The service bulletin also specifies the following compliance times for:

- *Related investigative actions:* Before further flight.
- *Corrective actions:* Before further flight or within 3,000 flight cycles after the disbonding is found, depending on the location of the disbond.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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 airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 744 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 487 airplanes of U.S. registry. The proposed actions would take about 16 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $623,360, or $1,280 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13

by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–0270; Directorate Identifier 2007–NM–211–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 31, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007.

Unsafe Condition

(d) This AD results from reports indicating that bonded skin panels may not have been correctly anodized in phosphoric acid before the tear strap doubler was bonded to the skin. We are issuing this AD to detect and correct a weak bond between the skin and tear strap. Such disbonding could reduce the ability of the skin to resist cracks and could adversely affect the structural integrity of the airplane.

Compliance

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

Initial Inspection

(f) At the applicable initial compliance time in paragraph (f)(1) or (f)(2) of this AD, do an external ultrasound inspection for disbonded tear straps not mechanically fastened to the skin between stations 439 to 900, and 1180 to 1621, and between stringers 10 left and 10 right, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007.

(1) For airplanes with less than or equal to 21,000 total flight cycles: Before the accumulation of 24,000 total flight cycles, but no earlier than 18,000 total flight cycles.

(2) For airplanes with more than 21,000 total flight cycles: Within 3,000 flight cycles after the effective date of this AD.

Repetitive Inspection

(g) If no disbonding is found during the ultrasound inspection required by paragraph (f) of this AD, repeat the inspection once before 36,000 total flight cycles, but no earlier than 30,000 total flight cycles.

Related Investigative and Corrective Actions

(h) If any disbonding is found during the ultrasound inspection required by paragraph (f) or (g) of this AD, do the applicable related investigative and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007, at the applicable compliance time specified in 1.E., ''Compliance,'' of the service bulletin; except as provided by paragraph (i) of this AD.

(i) If any crack and/or corrosion is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 757–53–0077, Revision 1, dated August 6, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the crack and/or corrosion using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on December 7, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24383 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0349; Directorate Identifier 2007–CE–094–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A non-respect of the pilot door adjustment procedure could have damaged the stop fitting and could result in a consequent depressurization of the airplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 16, 2008.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Docket Management Facility 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 Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0349; Directorate Identifier 2007–CE–094–AD'' at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On February 6, 2007, we issued AD 2007–04–08, Amendment 39–14939 (72 FR 7559 February 16, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–04–08, EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007, was issued, which adds a procedure in the replacement of the stop fittings.

The Direction générale de l'aviation civile (DGAC), which is the aviation authority for France, has issued AD No. F–2007–016, October 10, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A non-respect of the pilot door adjustment procedure could have damaged the stop fitting and could result in a consequent depressurization of the airplane.

This proposed AD requires you to inspect the pilot door locking stop fittings for correct length and replace any incorrect length pilot door locking stop fittings found.

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

Relevant Service Information

EADS SOCATA has issued TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 157 products of U.S. registry. We also estimate that it would take about 4.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $15 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $58,875, or $375 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14939 (72 FR 7559, February 16, 2007), and adding the following new AD:

EADS SOCATA: Docket No. FAA–2007–0349; Directorate Identifier 2007–CE–094–AD.

Comments Due Date

(a) We must receive comments by January 16, 2008.

Affected ADs

(b) AD 2007–04–08, Amendment 39–14939.

Applicability

(c) This AD applies to Model TBM 700 airplanes, serial numbers 126 through 322, that are:

(1) equipped with a pilot door; and
(2) certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

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

A non-respect of the pilot door adjustment procedure could have damaged the stop fitting and could result in a consequent depressurization of the airplane.

This AD requires you to inspect the pilot door locking stop fittings for correct length and replace any incorrect length pilot door locking stop fittings found.

Requirements Retained From AD 2007–04–08

(f) Unless already done, inspect the pilot door locking stop-fittings for correct length within 30 days after March 23, 2007 (the effective date of AD 2007–04–08). Do the inspection following EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005, or EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007.

New Requirements of This AD: Actions and Compliance

(g) Do the following actions, unless already done:

(1) Any incorrect length pilot door locking stop-fittings replaced following the inspection required in paragraph (f) of this AD in accordance with AD 2007–04–08, using the original issue of EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, dated July 2005, must be replaced again within the next 12 months after the effective date of this AD. Do the replacement using EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007.

(2) Any incorrect length pilot door locking stop-fittings found during the inspection required in paragraph (f) of this AD and not previously replaced in accordance with AD 2007–04–08, must be replaced before further flight. Do the replacement using EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Special Flight Permit

(i) If you have ordered parts and they are not available, then you may fly unpressurized until parts become available or for a period not to exceed 90 days after the inspection required in paragraph (f) of this AD, whichever occurs first. You must also fabricate and install a placard as described below. Completing the action of paragraph (g)(2) of this AD terminates the placard requirement.

(1) Fabricate (using letters at least 1/8 inch in height) a warning placard that states ''This airplane is prohibited from pressurized flight.''

(2) Install the placard in full view of the pilot. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may install the placard as required in paragraph (h) of this AD.

Related Information

(j) Refer to MCAI Direction generale de l'aviation civile (DGAC) AD No. F–2007–016, October 10, 2007; and EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–131, Amendment 1, dated June 2007, for related information.

Issued in Kansas City, Missouri, on December 11, 2007.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24321 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0338; Directorate Identifier 2007–NM–139–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The existing AD currently requires reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. The existing AD also currently requires repetitively inspecting the skin, attachment fittings, and control rods of rudder II to detect cracking, loose parts, wear, or damage; and related investigative/corrective actions if necessary. This proposed AD would require the existing repetitive inspection to be done with new service information. This proposed AD also would require replacing the locking tab washers on the control rods of the rudder II and installing springs on the hinge assemblies of the rudder II, which would terminate the repetitive inspection requirements. This proposed AD results from reports of rudder vibration due to wear. We are proposing this AD to prevent failure of the rudder control rods, which could result in jamming of the rudder II, and possible structural failure and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 16, 2008.

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

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

For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0338; Directorate Identifier 2007–NM–139–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On November 2, 2005, we issued AD 2005–25–04, amendment 39–14397 (70 FR 72902, December 8, 2005), for all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. That AD also requires repetitively inspecting the skin, attachment fittings, and control rods of rudder II to detect cracking, loose parts, wear, or damage; and related investigative/corrective actions if necessary. That AD resulted from reports of rudder vibration due to wear. We issued that AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2005–25–04, the Agĕncia Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, issued Brazilian airworthiness directive 2005–09–02R2, effective May 10, 2007, to include updated procedures for the existing repetitive inspections and a terminating action for the repetitive inspections.

Relevant Service Information

EMBRAER has issued Alert Service Bulletin 145LEG–55–A010, Revision 02, dated May 16, 2006 (for Model EMB–135BJ airplanes); and 145–55–A036, Revision 03, dated May 16, 2006 (for Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes). (AD 2005–25–04 refers to EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005; and 145–55–A036, Revision 01, dated September 5, 2005; as the appropriate sources of service information for accomplishing the required repetitive inspections). Revision 02 of EMBRAER Alert Service Bulletin 145LEG–55–A010 and Revision 03 of EMBRAER Alert Service Bulletin 145–55–A036 were issued to include more details for accomplishing the repetitive inspections.

EMBRAER also has issued Alert Service Bulletin 145LEG–55–0011, Revision 01, dated January 23, 2007 (for Model EMB–135BJ airplanes); and 145–55–0038, Revision 01, dated January 23, 2007 (for Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes). The service bulletins describe procedures for replacing the locking tab washers on the control rods of the rudder II with new improved ones, and installing springs on the hinge assemblies of the rudder II. Accomplishment of these actions eliminates the need for the repetitive inspections specified in the service bulletins described previously.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The ANAC mandated the service information and issued Brazilian airworthiness directive 2005–09–02R2, effective May 10, 2007, to ensure the continued airworthiness of these airplanes in Brazil.

EMBRAER Alert Service Bulletin 145LEG–55–A010, Revision 02, dated May 16, 2006, refers to EMBRAER Service Bulletins 145LEG–55–0008, Revision 02, dated May 26, 2006; and 145LEG–55–0009, Revision 01, dated November 23, 2005; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

EMBRAER Alert Service Bulletin 145–55–A036, Revision 03, dated May 16, 2006, refers to EMBRAER Service Bulletins 145–55–0034, Revision 02, dated May 25, 2006; and 145–55–0035, Revision 02, dated March 28, 2006; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

FAA's Determination and Requirements of the Proposed AD

These airplanes are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ANAC has kept the FAA informed of the situation described above. We have examined the ANAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States. This proposed AD would supersede AD 2005–25–04 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service bulletins described previously.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Records review (required by AD 2005–25–04)	1	$80	None	$80	463	$37,040

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Terminating action (new proposed action)	5	80	644	1,044	463	483,372

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14397 (70 FR 72902, December 8, 2005) and adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–0338; Directorate Identifier 2007–NM–139–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 16, 2008.

Affected ADs

(b) This AD supersedes AD 2005–25–04.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of rudder vibration due to wear. We are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane.

Compliance

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

Requirements of AD 2005–25–04

Records Review

(f) Within 5 days after December 23, 2005 (the effective date of AD 2005–25–04): Review the airplane maintenance records to determine whether any vibration from the tail section or rudder pedals was reported within 120 flight hours or 100 flight cycles before December 23, 2005.

Inspection

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a detailed inspection of the skin, attachment fittings, and control rods of rudder II to detect cracks, loose parts, wear, or damage. Inspect in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005 (for Model EMB–135BJ airplanes); or 145–55–A036, Revision 01, dated September 5, 2005 (for all other airplanes); except as provided by paragraph (l) of this AD. Do all related investigative/corrective actions before further flight by doing all applicable actions specified in the service bulletin; except as required by paragraphs (i) and (l) of this AD. Repeat the inspection at intervals not to exceed 2,500 flight hours, except as required by paragraph (h) of this AD.

(1) If any vibration was reported during the time period specified in paragraph (f) of this AD, inspect within 2 days after the records review.

(2) If no vibration was reported during the time period specified in paragraph (f) of this AD, except as required by paragraph (h) of this AD, inspect before the later of:

(i) 2,500 total accumulated flight hours.

(ii) 600 flight hours or 500 flight cycles, whichever occurs first, after December 23, 2005.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as a mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(h) If any vibration from the tail section or rudder pedals is reported after December 23, 2005, do the inspection specified in paragraph (g) of this AD before the next flight. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours.

Note 2: EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005, and 145–55–A036, Revision 01, dated September 5, 2005; refer to EMBRAER Service Bulletins 145LEG–55–0008, Revision 01, dated January 14, 2005, 145LEG–55–0009, dated June 21, 2004, and 145–55–0034, Revision 01, dated January 14, 2005, as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Exceptions to Service Bulletin Specifications

(i) Where EMBRAER Alert Service Bulletins 145LEG–55–A010 and 145–55–

A036 specify to contact EMBRAER for repair instructions, operators must perform the repair before further flight using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (or its delegated agent).

(j) Although EMBRAER Alert Service Bulletins 145LEG–55–A010 and 145–55–A036 recommend sending a report of the inspection results to the manufacturer, this AD does not require a report.

Credit for Prior Accomplishment of Earlier Service Bulletin

(k) For Model –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: Accomplishment of the inspection and applicable related investigative/corrective actions before December 23, 2005, in accordance with EMBRAER Alert Service Bulletin 145–55–A036, dated August 20, 2005, is acceptable for compliance with the corresponding requirements of this AD.

New Requirements of This AD

New Revision to Service Bulletins

(l) As of the effective date of this AD, use only the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–A010, Revision 02, dated May 16, 2006 (for Model EMB–135BJ airplanes); or 145–55–A036, Revision 03, dated May 16, 2006 (for all other airplanes); as applicable; to do the actions required by paragraphs (g) and (h) of this AD, until the actions required by paragraph (m) of this AD are done.

Note 3: EMBRAER Alert Service Bulletin 145LEG–55–A010, Revision 02, dated May 16, 2006 (for Model EMB–135BJ airplanes) refers to EMBRAER Service Bulletins 145LEG–55–0008, Revision 02, dated May 26, 2006; and 145LEG–55–0009, Revision 01, dated November 23, 2005; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Note 4: EMBRAER Alert Service Bulletin 145–55–A036, Revision 03, dated May 16, 2006 (for EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes), refers to EMBRAER Service Bulletins 145–55–0034, Revision 02, dated May 25, 2006; and 145–55–0035, Revision 02, dated March 28, 2006; as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Terminating Action

(m) Within 5,500 flight hours or 36 months after the effective date of this AD, whichever occurs first, replace the locking tab washers on the control rods of the rudder II and install springs on the hinge assemblies of the rudder II, in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–0011, Revision 01, dated January 23, 2007 (for Model EMB–135BJ airplanes); or 145–55–0038, Revision 01, dated January 23, 2007 (for all other airplanes); as applicable. Accomplishment of the replacement and installation constitutes terminating action for the requirements of this AD.

Credit for Prior Accomplishment of Earlier Service Bulletins

(n) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–0011, dated May 12, 2006 (for Model EMB–135BJ airplanes); or 145–55–0038, dated May 12, 2006 (for all other airplanes); as applicable; are acceptable for compliance with the requirements of paragraph (m) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2005–25–04 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(p) Brazilian airworthiness directive 2005–09–02R2, effective May 10, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24330 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0337; Directorate Identifier 2007–NM–111–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During planned maintenance visit on two aircraft, corrosion was found on the upper surface of the wing lower skin panel N°1, inside the Right Hand (RH) inboard dry bay.

It was discovered that [certain] access panels * * * had been omitted from the access requirements of the associated AMM (airplane maintenance manual) task (AMM 05–25–40) until the August 2001 revision.

The result is that some * * * inspections may have not been fully accomplished due to non-removal of [certain] panels * * *.

If the area has not been inspected with the correct access, and if AIRBUS Service Bulletin (SB) A320–57–1121 has not been performed, then some aircraft could remain insufficiently inspected until the next scheduled inspection. This may result in a high risk of corrosion findings greater than level 1.

Corrosion findings greater than level 1 in the wing could result in reduced structural integrity of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 16, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA,

Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0337; Directorate Identifier 2007–NM–111–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0064R1, dated September 21, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During planned maintenance visit on two aircraft, corrosion was found on the upper surface of the wing lower skin panel N°1, inside the Right Hand (RH) inboard dry bay.
>
> It was discovered that access panels 540CZ, 540DZ, 640CZ and 640DZ had been omitted from the access requirements of the associated AMM (aircraft maintenance manual) task (AMM 05–25–40) until the August 2001 revision.
>
> The result is that some ZL–540–02–1 or ZL–540–02–2 (or ZL–540–02 and ZL–640–02) inspections may have not been fully accomplished due to non-removal of panels 540CZ, 540DZ, 640CZ and 640DZ.
>
> If the area has not been inspected with the correct access, and if AIRBUS Service Bulletin (SB) A320–57–1121 has not been performed, then some aircraft could remain insufficiently inspected until the next scheduled inspection. This may result in a high risk of corrosion findings greater than level 1.

Corrosion findings greater than level 1 in the wing could result in reduced structural integrity of the airplane. The corrective actions include an inspection for corrosion in the wing tank dry bay, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A320–57–1121, dated October 9, 2002. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 103 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $32,960, or $320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–0337; Directorate Identifier 2007–NM–111–AD.

Comments Due Date

(a) We must receive comments by January 16, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 series airplanes, certificated in any category, all certified models, all serial numbers, on which Maintenance Review Board Report (MRBR) zonal tasks ZL–540–02 and ZL–640–02 (for MRBR up to Revision 7)

or MRBR zonal task ZL–540–02–1 or ZL–540–02–2 (for MRBR since Revision 8) have already been performed before the effective date of this AD, and for which it cannot be substantiated that access panels 540CZ, 540DZ, 640CZ and 640DZ were removed for inspection. This AD does not apply to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which zonal tasks ZL–540–02–1 and ZL–540–02–2 (or ZL–540–02 and ZL–640–02) have been performed in accordance with airplane maintenance manual (AMM) 05–25–40 at August 2001 revision or later revision.

(2) Airplanes on which one of the following Airworthiness Limitation Items (ALI)/MRBR tasks have been performed: 572004–01–X, 572004–03–X; 572020–01–X, 572020–02–X; 572027–01–X, 572027–03–X; 572053–01–X, 572053–02–X; 572060–02–X; or 572061–02–X; where X represents the task applicability index.

(3) Airplanes delivered after March 27, 2007.

Note 1: Up to MRBR Revision 7, ZL–540–02 covered Zone 540 and ZL–640–02 covered Zone 640. Since MRBR Revision 8, ZL–540–02–1 or ZL–540–02–2 also cover the corresponding RH wing zone (Zone 640).

Subject

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

Reason

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

During planned maintenance visit on two aircraft, corrosion was found on the upper surface of the wing lower skin panel N° 1, inside the Right Hand (RH) inboard dry bay.

It was discovered that access panels 540CZ, 540DZ, 640CZ and 640DZ had been omitted from the access requirements of the associated AMM (aircraft maintenance manual) task (AMM 05–25–40) until the August 2001 revision.

The result is that some ZL–540–02–1 or ZL–540–02–2 (or ZL–540–02 and ZL–640–02) inspections may have not been fully accomplished due to non-removal of panels 540CZ, 540DZ, 640CZ and 640DZ.

If the area has not been inspected with the correct access, and if AIRBUS Service Bulletin (SB) A320–57–1121 has not been performed, then some aircraft could remain insufficiently inspected until the next scheduled inspection. This may result in a high risk of corrosion findings greater than level 1.

Corrosion findings greater than level 1 in the wing could result in reduced structural integrity of the airplane. The corrective actions include an inspection for corrosion in the wing tank dry bay, and repair if necessary.

Actions and Compliance

(f) Unless already done, do the following actions. Within 14 months after the effective date of this AD, perform a detailed visual inspection of the wing tank dry bay to detect corrosion and if any corrosion is found, before further flight, contact Airbus for repair instructions and repair. Do all applicable actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1121, dated October 9, 2002. Another approved method for doing the detailed inspection and applicable corrective actions is the accomplishment of one of the following ALI/MRBR tasks: 572004–01–X, 572004–03–X; 572020–01–X, 572020–02–X; 572027–01–X, 572027–03–X; 572053–01–X, 572053–02–X; 572060–02–X; or 572061–02–X; and ZL–540–02–X if panels 540CZ, 540DZ, 640CZ, and 640DZ panels have been removed; where X represents the task applicability index.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Transport Airplane Directorate, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0064R1, dated September 21, 2007, and Airbus Service Bulletin A320–57–1121, dated October 9, 2002, for related information.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24332 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0334; Directorate Identifier 2007–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42 and ATR72 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

[T]he FAA has published a set of new rules related to the fuel tank safety, including the Special Federal Aviation Regulation 88 (SFAR 88).

The JAA (Joint Aviation Authority) has issued an Interim Policy JAA INT/POL 25/12, to recommend the application of a similar requirement to the National Aviation Authorities (NAA) [of Europe].

* * * * *

* * * ATR carried out a safety review on the fuel tank systems and zones adjacent to the fuel tanks on all ATR models * * *.

* * * * *

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 16, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0334; Directorate Identifier 2007–NM–206–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0226, dated August 24, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> [T]he FAA has published a set of new rules related to the fuel tank safety, including the Special Federal Aviation Regulation 88 (SFAR 88).
>
> The JAA (Joint Aviation Authority) has issued an Interim Policy JAA INT/POL 25/12, to recommend the application of a similar requirement to the National Aviation Authorities (NAA) [of Europe].
>
> This recommendation was followed by French DGAC, which rendered the compliance to JAA INT/POL 25/12 mandatory for all ATR Aircraft.
>
> Under this regulation, all holders of type certificates are required to conduct a design review of their fuel tank systems against explosion risk. It also requires the development and implementation of maintenance and inspection instructions to maintain the safety of the fuel tank system. To answer JAA INT/POL 25/12, and in accordance with SFAR 88 requirements and guideline, ATR carried out a safety review on the fuel tank systems and zones adjacent to the fuel tanks on all ATR models using relevant safety assessment methods of JAR 35.1309.
>
> As a result of this safety review, ATR developed for ATR 42 the modification 05355 (SB (service bulletin) ATR42–28–0039), and for ATR 72 the modification 05356 (SB ATR72–28–1019). Those modifications consist in the installation of fuses adapters on wiring entering the fuel tanks and current limitation devices. For ATR 72 aircraft, the modification also requires replacement of the high level sensors with new sensors having shorter harness.

The modification also includes related investigative and corrective actions, which include inspecting the electrical harness for correct installation and adjusting the harness as necessary, and, for Model ATR42 airplanes, inspecting the bonding strap for correct installation and adjusting the bonding strap. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

ATR has issued Service Bulletins ATR42–28–0039, Revision 04, dated June 12, 2007; and ATR72–28–1019, Revision 05, dated June 12, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the

MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 55 products of U.S. registry. We also estimate that it would take about 150 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $23,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,925,000, or $35,000 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR–GIE Avions De Transport Régional (Formerly Aerospatiale): Docket No. FAA–2007–0334; Directorate Identifier 2007–NM–206–AD.

Comments Due Date

(a) We must receive comments by January 16, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) ATR Model ATR42–200, –300, –320, and –500 airplanes, certificated in any category, serial numbers 1 through 642.

(2) ATR Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes, certificated in any category, serial numbers 1 through 724.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

[T]he FAA has published a set of new rules related to the fuel tank safety, including the Special Federal Aviation Regulation 88 (SFAR 88).

The JAA (Joint Aviation Authority) has issued an Interim Policy JAA INT/POL 25/12, to recommend the application of a similar requirement to the National Aviation Authorities (NAA) [of Europe].

This recommendation was followed by French DGAC, which rendered the compliance to JAA INT/POL 25/12 mandatory for all ATR Aircraft.

Under this regulation, all holders of type certificates are required to conduct a design review of their fuel tank systems against explosion risk. It also requires the development and implementation of maintenance and inspection instructions to maintain the safety of the fuel tank system. To answer JAA INT/POL 25/12, and in accordance with SFAR 88 requirements and guidelines, ATR carried out a safety review on the fuel tank systems and zones adjacent to the fuel tanks on all ATR models using relevant safety assessment methods of JAR 35.1309.

As a result of this safety review, ATR developed for ATR 42 the modification 05355 (SB (service bulletin) ATR42–28–0039), and for ATR 72 the modification 05356 (SB ATR72–28–1019). Those modifications consist in the installation of fuses adapters on wiring entering the fuel tanks and current limitation devices. For ATR 72 aircraft, the modification also requires replacement of the high level sensors with new sensors having shorter harness.

The modification also includes related investigative and corrective actions, which include inspecting the electrical harness for correct installation and adjusting the harness as necessary, and, for Model ATR42 airplanes, inspecting the bonding strap for correct installation and adjusting the bonding strap. The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Actions and Compliance

(f) Within 41 months after the effective date of this AD, unless already done, modify the fuel system and do all applicable related investigative and corrective actions according to the instructions given by the applicable service bulletin listed in Table 1 of this AD. Do all applicable related investigative and corrective actions before further flight.

Actions accomplished before the effective date of this AD in accordance with Avions de Transport Regional Service Bulletin ATR42–28–0039, Revision 03, dated November 15, 2006, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1.—SERVICE INFORMATION

Avions de Transport Regional Service Bulletin	Revision level	Date
ATR42–28–0039 (for Model ATR42 Airplanes)	04	June 12, 2007.
ATR72–28–1019 (for Model ATR72 Airplanes)	05	June 12, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The additional actions specified in the MCAI for operators that have done actions in accordance with previous issues of the service bulletins are not complete. Therefore, this AD only refers to ATR Service Bulletin ATR42–28–0039, Revision 03, dated November 15, 2006; Revision 04, dated June 12, 2007; and ATR72–28–1019, Revision 05, dated June 12, 2007; as appropriate sources of service information for accomplishing the required actions. Operators that have done actions in accordance with previous issues of the service bulletins may request an approval for an alternative method of compliance (AMOC) according to paragraph (g) of this AD, provided that the AMOC provides an acceptable level of safety.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0226, dated August 24, 2007, and the service information listed in Table 2 of this AD, for related information.

TABLE 2.—RELATED SERVICE INFORMATION

Avions de Transport Regional Service Bulletin	Revision level	Date
ATR42–28–0039	04	June 12, 2007.
ATR72–28–1019	05	June 12, 2007.

Issued in Renton, Washington, on December 10, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24382 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4 and 9

[Notice No. 79; Re: Notice No. 77]

RIN 1513–AA92

Proposed Establishment of the Calistoga Viticultural Area; Comment Period Extension

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to industry member requests, we are extending the comment period for Notice No. 77, Proposed Establishment of the Calistoga Viticultural Area, a notice of proposed rulemaking published in the **Federal Register** on November 20, 2007, for an additional 90 days.

DATES: Written comments on Notice No. 77 must now be received on or before March 20, 2008.

ADDRESSES: You may send comments on Notice No. 77 to one of the following addresses:

- *http://www.regulations.gov* (Federal e-rulemaking portal; follow the instructions for submitting comments); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

You may view copies of this notice, Notice No. 77, and any comments we receive about the proposals described in Notice No. 77 under Docket No. TTB–2007–0067 on the Regulations.gov Web site at *http://www.regulations.gov*. A link to Docket No. TTB–2007–0067 is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*, within the entry for Notice No. 77. In addition, you may view copies of the same materials described above by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927–2400.

FOR FURTHER INFORMATION CONTACT: Amy R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; telephone 202–927–8210; or e-mail *Amy.Greenberg@ttb.gov*.

SUPPLEMENTARY INFORMATION: On March 31, 2005, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a notice of proposed rulemaking in the **Federal Register** regarding the establishment of the Calistoga viticultural area (see Notice No. 36, 70 FR 16451). In light of comments regarding the potential adverse impact on established brand names that we

received in response to that first notice, we published a second notice of proposed rulemaking on November 20, 2007, as Notice No. 77 (72 FR 65256) requesting comments on our proposal to provide ''grandfather'' protection for certain brand names used on existing certificates of label approval, provided those labels also carry information that would dispel an impression that the wine meets the requirements for using the viticultural area name. As originally published, comments on Notice No. 77 are due on or before December 20, 2007, 30 days after its publication.

Also on November 20, 2007, TTB published Notice No. 78 (72 FR 65261), a notice of proposed rulemaking regarding our regulations on the establishment of American viticultural areas. The proposed amendments clarify rules for preparing, submitting, and processing viticultural area petitions. The proposals contained in Notice No. 78 also include an amendment to 27 CFR 4.39(i) that would establish a ''grandfather'' provision to protect wine labels using a viticultural area name, provided that the label in question was approved and in actual commercial use for a specified period of time preceding TTB's receipt of a perfected petition for establishment of the viticultural area. As originally published, comments on Notice No. 78 are due on or before January 22, 2008, 60 days after its publication.

After the publication of Notice No. 77, TTB received two requests from wine industry groups to extend that notice's comment period. Both the Napa Valley Vintners, a trade group representing over 300 Napa Valley (California) vintners, and the Wine Institute, a trade representing 1,100 California wineries and wine-related businesses, requested that the comment period for Notice No. 77 be extended an additional 90 days.

In support of its extension request, Napa Valley Vintners indicates that the proposed grandfather provision contained in Notice No. 77 ''is of great concern to our association'' and is ''inextricably linked'' to TTB's more general grandfathering proposal contained in Notice No. 78. The association believes that its decisions regarding the two notices ''should be made at the same time.'' Its requested 90-day extension, the group states, will allow its Winegrower Appellation Committee to consider the grandfather provision and the specific questions posed by TTB in Notice No. 77. The Napa Valley Vintners' request notes that its appellation committee's recommendations must then be presented to the group's board of directors, which only meets once a month.

The Wine Institute, in its comment period extension request, also noted that Notice Nos. 77 and 78 deal with similar issues ''that call for consistent rather than staggered comment periods.'' In addition, the Wine Institute stated that, with the holiday season, its membership ''is engaged in one of its busiest months of the year.''

In response to these requests, TTB extends the original 30-day comment period for Notice No. 77 for an additional 90 days, so that the comment period will equal 120 days. Therefore, comments on Notice No. 77 are now due on or before March 20, 2008.

Drafting Information

Michael Hoover of the Regulations and Rulings Division drafted this notice.

John J. Manfreda,

Administrator.

[FR Doc. E7–24361 Filed 12–14–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 9, and 70

[Notice No. 80; Re: Notice No. 78]

RIN 1513–AB39

Proposed Revision of American Viticultural Area Regulations; Extension of Comment Period

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to industry member requests, we are extending the comment period for Notice No. 78, Proposed Revision of American Viticultural Area Regulations, a notice of proposed rulemaking published in the **Federal Register** on November 20, 2007, for an additional 60 days.

DATES: Written comments on Notice No. 78 must now be received on or before March 20, 2008.

ADDRESSES: You may send comments on Notice No. 78 to one of the following addresses:

- *http://www.regulations.gov* (Federal e-rulemaking portal; follow the instructions for submitting comments); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

You may view copies of this notice, Notice No. 78, and any comments we receive about the proposals described in Notice No. 78 under Docket No. TTB–2007–0068 on the Regulations.gov Web site at *http://www.regulations.gov*. A link to Docket No. TTB–2007–0068 is also available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*, within the entry for Notice No. 78. In addition, you may view copies of the same materials described above by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927–2400.

FOR FURTHER INFORMATION CONTACT: Rita D. Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20220; telephone: 202–927–1608, fax: 202–927–8525.

SUPPLEMENTARY INFORMATION: On November 20, 2007, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a notice of proposed rulemaking in the **Federal Register** as Notice No. 78 (72 FR 65261) requesting comments on proposed amendments to our regulations regarding the use of geographic brand names found in 27 CFR part 4 and the establishment of American viticultural areas (AVAs) contained in 27 CFR part 9. The proposed amendments address the effect that the approval of an AVA may have on established brand names and clarify the rules for preparing, submitting, and processing viticultural area petitions. TTB also proposes to add to the regulations statements regarding the viticultural significance of established viticultural area names, or key portions of those names, for wine labeling purposes. As originally published, comments on Notice No. 78 are due on or before January 22, 2008, 60 days after its publication.

Also on November 20, 2007, TTB published Notice No. 77 in the **Federal Register** (72 FR 65256), a notice of proposed rulemaking regarding the establishment of the Calistoga viticultural area in Napa County, California. Specifically, Notice No. 77 sought comments on a proposal to provide ''grandfather'' protection for certain brand names used on existing certificates of label approval. As originally published, comments on Notice No. 77 are due on or before December 20, 2007, 30 days after its publication.

After the publication of Notice No. 78, TTB received three requests from wine industry groups to extend that notice's

comment period. Requests for 60-day extensions were received from the Napa Valley Vintners, a trade group representing over 300 Napa Valley (California) vintners, and the Wine Institute, a trade representing 1,100 California wineries and wine-related businesses. The Oregon Winegrowers Association, a trade association with 239 grape grower and winery members, requested a 120-day extension.

In support of its extension request, Napa Valley Vintners indicates that the proposed amendments to the AVA program cannot be considered by its membership within the announced comment period. The group states that it only meets once a month, and ''because of the complexity of the subjects covered in the Notice, the current holiday season and market visits already scheduled by our winery members during January, we will be unable to complete our deliberations and finalize our comments until after our general membership meeting in March.''

The Wine Institute, in its comment period extension request, stated that Notice No. 78 ''is complex and far-reaching, and will affect many of our members.'' The Wine Institute also noted that the comment period deadline for Notice No. 78 runs up against the January 27, 2008, comment deadline for Notice No. 73, a notice of proposed rulemaking regarding ''Serving Facts'' labeling for alcohol beverages, ''which is already demanding a large part of our resources and membership participation,'' all of which is occurring during the holiday season when its membership ''is engaged in one of its busiest months of the year.'' In addition, the group adds that Notice Nos. 77 and 78 deal with similar issues ''that call for consistent rather than staggered comment periods.''

The Oregon Winegrowers Association, noting the ''complex and lengthy'' proposals outlined in Notice No. 78, states that it will require additional time to thoroughly understand the full impact of the proposals, acquaint its board members with their meaning, garner consensus within the industry, and respond in detail to the notice's proposals.

In response to these requests, TTB extends the original 60-day comment period for Notice No. 78 for an additional 60 days so that the comment period will equal 120 days. Therefore, comments on Notice No. 77 are now due on or before March 20, 2008.

Drafting Information

Michael Hoover of the Regulations and Rulings Division drafted this notice.

Signed: December 11, 2007.

John J. Manfreda,

Administrator.

[FR Doc. E7–24364 Filed 12–14–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

[Stats No. CR–1–FOR; Docket ID OSM–2007–0019]

Crow Tribe Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Crow Tribe Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter, the Crow Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Crow Tribe has requested concurrence from the Secretary of the Department of the Interior with its certification of completion of all coal-related reclamation objectives. If the Secretary concurs with the certification, the Crow Tribe intends to request AMLR funds to pursue projects in accordance with section 411 of SMCRA.

DATES: Comments on the proposed rule must be received by 4:00 p.m., m.s.t., January 16, 2008 to ensure our consideration. If requested, we will hold a public hearing on the amendment on January 11, 2008. We will accept requests to speak until 4 p.m., m.s.t., January 2, 2008.

ADDRESSES: You may submit comments by either of the two following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* The notice is listed under the agency name ''Office of Surface Mining Reclamation and Enforcement'' and has been assigned Docket ID: OSM–2007–0019.
- *Mail/Hand Delivery:* Jeffrey Fleischman, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 150 East ''B'' Street, Room 1018, Casper, Wyoming 82601. Please include the Docket ID (OSM–2007–0019) with your comments.

If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and do the following. Find the blue banner with the words ''Search Documents'' and go to ''Optional Step 2.'' Select ''Office of Surface Mining Reclamation and Enforcement'' from the agency drop-down menu, then click the ''Submit'' button at the bottom of the page. The next screen will have the title ''Document Search Results.'' The proposed rule is listed under the Docket ID as OSM–2007–0019. If you click on OSM–2007–0019, you can view and print a copy of the amendment, the proposed rule, add comments, and view any comments submitted by other persons.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

You may receive one free copy of this amendment by contacting OSM's Casper Field Office. You may access this amendment's docket, review copies of the Crow Plan and this amendment, find a listing of any scheduled public hearings, and review all written comments received in response to this document during normal business hours, Monday through Friday, excluding holidays, at the following addresses:

Federal e-Rulemaking Portal: http://www.regulations.gov. The notice has been assigned Docket ID: OSM–2007–0019.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East ''B'' Street, Room 1018, Casper, Wyoming 82601, (307) 261–6550, *jfleischman@osmre.gov.*

Carl Venne, Chairman, Crow Tribe Executive Branch, Bacheeitche Avenue, Crow Agency, Montana 59022, (406) 638–3715.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Casper Field Office Director, Telephone: (307) 261–6550, Internet address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Crow Plan
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Crow Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines.

On January 4, 1989, the Secretary of the Interior approved the Crow Tribe's AMLR Plan. You can find general background information on the Crow Plan, including the Secretary's findings and the disposition of comments, in the January 4, 1989, **Federal Register** (54 FR 116). You can also find later actions concerning Crow Tribe's Plan and plan amendments at 30 CFR 756.20.

II. Description of the Proposed Amendment

By letter dated May 29, 2007, the Crow Tribe indicated to OSM that all high priority coal-related hazards on the Crow Reservation have been successfully addressed. As such, the Crow Tribe seeks certification of completion of all coal-related problems. If this request is approved by OSM it will mark the addressing, for the present, of all known existing coal-related problems within the Crow Reservation eligible for funding under the AMLR program.

If approved, the certificate of completion will be codified at 30 CFR 756.20. In accordance with 30 CFR 875.13(c), the Crow Tribe may then implement a program under Section 411 of SMCRA.

OSM is seeking public comment on the adequacy of the Crow Tribe's certification that it has addressed all reclamation relating to abandoned coal mine lands. In addition, OSM is aware of the potential for problems occurring in the future which relate to pre-August 3, 1977, coal mining. In accordance with 30 CFR 875.13(a)(3), the Crow Tribe agrees to acknowledge and give top priority to any coal-related problem(s) that may be found or occur after submission of the certificate of completion.

The full text of the plan amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), OSM requests your comments on whether the amendment satisfies the applicable Tribal reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Crow Plan.

Electronic or Written Comments: If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on January 2, 2008. If you are disabled and need reasonable accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have identified potential effects on a federally recognized Indian tribe (the Crow Tribe) that will result from this rule which is based on an amendment submitted by the Crow Tribe. This rule will enable the Crow Tribe to utilize AMLR grant monies to implement a program under Section 411 of SMCRA. We have been in consultation with the Crow Tribe and will fully consider tribal views when we develop the final rule.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis of the amendment submitted by the tribe.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of tribal AMLR plans and revisions thereof because each plan is drafted and promulgated by a specific Indian tribe, not by OSM. Decisions on the proposed Crow Tribe AMLR plan and revisions thereof submitted by the Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Part 884.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

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

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) by the Manual of the Department of the Interior (516 DM 13.5(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule, if adopted, would affect only the Crow Tribe and, as previously stated, would allow the tribe to request AMLR funds to pursue projects in accordance with section 411 of SMCRA.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. Based on the nature of the amendment submitted by the tribe, we have determined that the rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of $100 million or more in any given year. This determination is based on the nature of the amendment submitted by the tribe.

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: November 5, 2007.

Louis Hamm,

Acting Regional Director, Western Region.

[FR Doc. E7–24389 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–058–FOR; Docket ID: OSM–2007–0018]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: Comments on the proposed rule must be received on or before 4 p.m., c.t., January 16, 2008, to ensure our consideration. If requested, we will hold a public hearing on the amendment on January 11, 2008. We will accept requests to speak at a hearing until 4 p.m., c.t. on January 2, 2008.

ADDRESSES: You may submit comments by either of the two following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule is listed under the agency name ''OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT'' and has been assigned Docket ID: OSM–2007–0018.
- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629. Please include the Docket ID (OSM–2007–0018) with your comments.

If you would like to submit comments through the Federal eRulemaking Portal, go to www.regulations.gov and do the following. Find the blue banner with the words ''Search Documents'' and go to ''Optional Step 2.'' Select ''Office of Surface Mining Reclamation and Enforcement'' from the agency drop-down menu, then click the ''Submit'' button at the bottom of the page. The next screen will have the title ''Document Search Results.'' The proposed rule is listed under the Docket ID as OSM–2007–0018. If you click on OSM–2007–0018, you can view and print a copy of the amendment, the proposed rule, add comments, and view any comments submitted by other persons.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. See below **FOR FURTHER INFORMATION CONTACT**.

You may review a copy of the amendment during regular business hours at the following locations:

Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated October 2, 2007 (Administrative Record No. TX–664), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read on the internet at *www.regulations.gov* and at the other locations listed above under **ADDRESSES**.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.108(b) regarding annual permit fees by:

(1) Decreasing the amount of the fee for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year,

(2) Increasing the amount of the fee for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, and

(3) Increasing the amount of the fee for each permit in effect on December 31st of the year.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your comments to us by one of the two methods specified above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on January 2, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the docket for this rulemaking.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 2007.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E7–24393 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[Docket ID: OSM–2007–0013; SATS No. VA–124–FOR]

Virginia Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We are announcing receipt of revisions to a previously proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions concern Virginia's standards for revegetation success for certain postmining land uses. The amendment is intended to render the State's regulations no less effective than the Secretary's regulations in meeting the requirements of the Act. This document gives the times and locations that the Virginia program and proposed amendment to that program are available for your inspection and the comment period during which you may submit written comments on the revisions to the amendment.

DATES: Comments on the proposed rule must be received on or before January 2, 2008 to ensure our consideration.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule is listed under the agency name ''OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT.'' It has been assigned Docket ID: OSM–2007–0013.

If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and do the following. Find the blue banner with the words ''Search Documents'' and go to ''Optional Step 2.'' Select ''Office of Surface Mining Reclamation and Enforcement'' from the agency drop-down menu, then click the ''Submit'' button at the bottom of the page. The next screen will have the title ''Document Search Results.'' The proposed rule is listed under the Docket ID as OSM–2007–0013. If you click on OSM–2007–0013, you can view the proposed rule, add comments, and view any comments submitted by other persons.

- *Mail/Hand Delivery:* Mr. Earl Bandy, Director, Knoxville Field Office,

Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219. Please include the Docket ID (OSM–2007–0013) with your written comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

You may also request to speak at a public hearing by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: The proposed rule, additional documentation, and any comments that are submitted may be viewed over the internet at *www.regulations.gov.* Look for Docket ID: OSM–2007–0013.

In addition, you may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting:

Mr. Earl Bandy, Director, Knoxville Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (276) 523–4303. E-mail: *ebandy@osmre.gov.*

Mr. Gavin Bledsoe, Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (276) 523–8100. E-mail: *gavin.bledsoe@dmme.virginia.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Earl Bandy, Director, Knoxville Field Office; Telephone: (276) 523–4303. E-mail: *ebandy@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures

I. Background on the Virginia Program

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

II. Description of the Proposed Amendment

By letter dated February 13, 2007 (Administrative Record Number VA–1059), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its submission, DMME proposed to revise the Virginia program regarding, among other things, revegetation success standards. We announced receipt of the proposed amendment in the April 9, 2007, **Federal Register** (72 FR 17452). The public comment period closed on May 9, 2007.

The portion of the February 13, 2007, amendment dealing with revegetation success standards involved proposed changes to Virginia's regulations at 4 VAC 25–130–816 and 817.116(a)(2) and (b)(3)(v)(C). DMME proposed to revise subsection (a)(2) to consider the levels of ground cover, production, or stocking as being equal to the approved success standard when they were not less than 70% of that success standard. DMME also proposed to revise subsection (a)(2) by adding an exception to the success standard requirements as provided for in subsection (b). Subsection (b) provides success standards for certain approved postmining land uses. Finally, DMME proposed to amend subsection (a)(2) by deleting a provision requiring that the sampling techniques for measuring success use a 90% statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). In subsection (b)(3)(v)(C), DMME proposed to amend standards for herbaceous vegetation success on postmining land uses where woody plants are used for wildlife management, recreation, shelter belts or forest uses other than commercial forest land by requiring that areas planted with a mixture of herbaceous and woody species sustain a herbaceous ground cover of 70%.

After the February 13, 2007, proposed rule was published in the **Federal Register**, DMME revised the portion of its proposed amendment dealing with revegetation success standards. By electronic mail dated April 18, 2007, (Administrative Record Number VA–1074), DMME stated that it wished to withdraw the changes it previously made to 4 VAC 25–130–816 and 817.116(a)(2) regarding the sampling techniques and retain the original language. Additionally, DMME indicated that it wished to revise the herbaceous ground cover success standard of 4 VAC 25–130–816 and 817.117(b)(3)(v)(C) to require that postmining land uses of wildlife management, recreation, shelter belts, or forest uses other than commercial forest land that are planted with a mixture of herbaceous and woody species must sustain a herbaceous ground cover of 80%. We announced these proposed revisions in a July 5, 2007, **Federal Register** notice (72 FR 36632) in which we reopened the public comment period. The reopened public comment period closed July 20, 2007.

After our review of the second resubmission of the amendments and based on our discussions regarding the amendment with DMME, DMME chose to resubmit 4 VAC 25–130–816 and 817.116(b)(3) and 816 and 817.116(b)(3)(v)(C) with added language that would facilitate the growth of woody plants in areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forestry. By electronic mail dated August 30, 2007 (Administrative Record Number VA–1082), DMME stated that it would revise parts of 4 VAC 25–130–816 and 817.116 based, in part, on discussions with us regarding the benefits of using the Forestry Reclamation Approach (FRA). The FRA is a method for reclaiming coal-mined land to forests and is based on knowledge gained from both scientific research and experience. It is designed to restore forest land capability and accelerate the natural process of forest development. The FRA advocates selection of a suitable rooting medium for tree growth, loosely grading the growth medium to reduce compaction, using ground covers compatible with growing trees, planting early succession and commercially valuable tree species, and using proper tree planting techniques.

DMME's first proposed revision occurs at 4 VAC 25–130–816 and 817.116(b)(3). DMME is proposing to modify this section to indicate that for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, woody plants must

be stocked at least equal to the rates specified in the approved reclamation plan. Additionally, DMME is proposing to add a requirement that in order to minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. The proposed revisions correspond to the Federal regulations at 30 CFR 816 and 817.116(b)(3) that provide the standards for success of revegetation and are essentially identical to the ground cover standards for areas where trees will be planted that were adopted by OSM in the Tennessee Federal Program on March 2, 2007 (72 FR 9616) and codified at 30 CFR 942.816 and 942.817.

With this new amendment, 4 VAC 25–130–816 and 817.116(b)(3) is proposed to read as follows:

4 VAC 25–130–816.116(b)(3) and 817.116(b)(3). Revegetation; standards for success.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forestry, the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:

* * * * *

DMME's second proposed revision occurs at 4 VAC 25–130–816 and 817.116(b)(3)(v)(C). DMME deleted ''products, success of vegetation shall be determined on the basis of tree and shrub'' and added ''the stocking of woody plants must be at least equal to the rates specified in the approved reclamation plan. To minimize competition with woody plants, herbaceous ground cover should be limited to that necessary to control erosion and support the postmining land use. Seed mixtures and seeding rates will be specified in the approved reclamation plan. Such parameters are described as follows:''

With this new amendment, 4 VAC 25–130–816 and 817.116(b)(3)(v)(C) is proposed to read as follows:

4 VAC 25–130–816.116(b)(3)(v)(C) and 817.116(b)(3)(v)(C). Revegetation; standards for success.

(v) Where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

* * * * *

(C) Areas planted with a mixture of herbaceous and woody species shall sustain a herbaceous vegetative ground cover in accordance with guidance provided by the division and the approved forestry reclamation plan and establish an average of 400 woody plants per acre. At least 40 of the woody plants for each acre shall be wildlife food-producing shrubs located suitably for wildlife enhancement, which may be distributed or clustered on the area.

* * * * *

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written or Electronic Comments

Send your written or electronic comments to OSM at one of the addresses given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 16, 2007.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. E7–24392 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–1128; FRL–8506–9]

Approval and Promulgation of Implementation Plans; Nebraska; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a revision to the Nebraska State Implementation Plan (SIP) for the purpose of approving the Nebraska Department of Environmental Quality's (NDEQ) actions to address the ''good neighbor'' provisions of the Clean Air Act Section 110(a)(2)(D)(i). These provisions require each state to submit a SIP that prohibits emissions that adversely affect another state's air quality through interstate transport. NDEQ has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants. These include prohibiting significant contribution to downwind nonattainment of the National Ambient Air Quality Standards (NAAQS), interference with maintenance of the NAAQS, interference with plans in another state to prevent significant deterioration of air quality, and efforts of other states to protect visibility. The requirements for public notification were also met by NDEQ.

DATES: Comments on this proposed action must be received in writing by January 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–1128 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: jay.michael@epa.gov.*
3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier.* Deliver your comments to Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. 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 to 4:30, excluding legal holidays.

Please see the direct final rule that is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460, or by e-mail at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the

approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule that is located in the rules section of this **Federal Register**.

Dated: November 29, 2007.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E7–24233 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[96100–1671–0000–W4]

RIN 1018–AV21

Endangered and Threatened Wildlife and Plants; Proposed Rule To List Six Foreign Bird Species Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list three petrel species (order Procellariiformes), the Chatham petrel (*Pterodroma axillaris*), previously referred to as (*Pterodroma hypoleuca axillaris*); Fiji petrel (*Pterodroma macgillivrayi*); and the magenta petrel (*Pterodroma magentae*) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). In addition, we propose to list the Cook's petrel (*Pterodroma cookii*); Galapagos petrel (*Pterodroma phaeopygia*), previously referred to as (*Pterodroma phaeopygia phaeopygia*); and the Heinroth's shearwater (*Puffinus heinrothi*) as threatened under the Act. This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on this proposal.

DATES: We must receive comments and information from all interested parties by March 17, 2008. Public hearing requests must be received by January 31, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018–AV21; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Mary M. Cogliano, PhD, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203; telephone 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

In this proposed rule, we propose to list three foreign seabird species as endangered, pursuant to the Act (16 U.S.C. 1531, *et seq.*). These species are: the Chatham petrel (*Pterodroma axillaris*), Fiji petrel (*Pterodroma macgillivrayi*), and magenta petrel (*Pterodroma magentae*). We also propose to list the Cook's petrel (*Pterodroma cookii*), Galapagos petrel (*Pterodroma phaeopygia*), and Heinroth's shearwater (*Puffinus heinrothi*) as threatened species under the Act. All species are considered pelagic, occurring on the open sea generally out of sight of land, where they feed year round. They return to nesting sites on islands during the breeding season where they nest in colonies (Pettingill 1970, p. 206).

Chatham petrel (Pterodroma axillaris)

The Chatham petrel is also known by its Maori name, ranguru. Fossil evidence indicates that this species was once widespread throughout the Chatham Islands of New Zealand [New Zealand Department of Conservation (NZDOC) 2001b]. However, the species is currently only known to breed on South East Island (Rangatira) (BirdLife International 2007a) and, as a result of recent release efforts, on Pitt Island (BirdLife International News 2006) within the Chatham Islands. The population of this species is very small, estimated at 800–1,000 birds based on recent research and banding studies (Taylor 2000), and is showing a decreasing population trend (BirdLife International 2007a). It is estimated that fewer than 200 pairs breed per year (NZDOC 2001b). The IUCN considers the Chatham petrel to be ''Critically Endangered'' (BirdLife International 2006a).

Banding studies have shown that young birds of this species remain at sea for at least two years before returning to land to breed and nest. Based on limited feeding habits data, the species preys on squid and small fish (Heather and Robertson 1997, as cited in BirdLife International 2000).

Fiji petrel (Pterodroma macgillivrayi)

Synonyms for the Fiji petrel include *Pseudobulweria macgillivrayi* and *Thalassidroma macgillivrayi.* Very little information is available on the Fiji petrel and its life history. There have only been 12 substantiated sightings of this species on land since 1965, and a total of 13 historically. These sightings have all been on Gau Island (BirdLife International 2000), a 52.55-square mile (136.1 km^2) island in Fiji's Lomaiviti archipelago (Wikipedia 2007f). The population of this species is very small, estimated at less than 50 birds and is showing a decreasing population trend (BirdLife International 2007c). The IUCN classifies the Fiji petrel as ''Critically Endangered'' (BirdLife International 2006c).

Magenta petrel (Pterodroma magentae)

The magenta petrel, or Taiko as it is known locally, is native to Chatham Island, New Zealand (BirdLife International 2000), the largest island in the Chatham Islands chain, covering 348 square miles (900 km^2, Wikipedia 2007b). Based on fossil evidence and historical records, it is believed that the magenta petrel was once the most abundant burrowing seabird on Chatham Island (Bourne 1964, Sutton and Marshall 1977, as cited in NZDOC 2001a). It has been reported that prior to 1900, indigenous Moriori and Maori harvested thousands of petrel chicks for food (Crockett 1994). The limited feeding habits data show that the magenta petrel preys on squid (Heather and Robertson 1997, as cited in BirdLife International 2000).

The type specimen for the magenta petrel was first collected at sea in 1867, and after 10 years of intensive searching the species was re-discovered in 1978 in

the southeast corner of Chatham Island (Crockett 1994). Since then, additional searches have resulted in the location and banding of 92 birds (BirdLife International 2007d). The IUCN considers this species as ''Critically Endangered'' (BirdLife International 2006d). The magenta petrel population is estimated at 120 individuals with a decreasing trend (BirdLife International 2007d).

Cook's petrel (Pterodroma cookii)

Cook's petrel is endemic to the New Zealand archipelago (del Hoyo, *et al.* 1992), which comprises two main islands, the North and South Islands, and numerous smaller islands. The total land area of the archipelago covers 103,700 square miles (268,680 km^2, Wikipedia 2007i). Historically, Cook's petrels were harvested in large numbers as a food source by native Moriori (Oliver 1955).

Although the Cook's petrel was once considered a dominant species on these islands, the species' breeding and nesting activities are now restricted to islands at the northern and southern limits of its former breeding range, including Great Barrier (Aotea), Little Barrier (Hauturu), and Codfish (Whenua Hou) Islands (del Hoyo, *et al.* 1992). The species' diet consists primarily of cephalopods, fish, crustaceans, and bioluminescent tunicates that can be hunted at night (Imber 1996).

The IUCN classifies this species as ''Endangered'' (BirdLife International 2006b). Although the population on Little Barrier Island was thought to be about 50,000 pairs (BirdLife International 2007b), using GIS (Geographic Information System) technology, Rayner, *et al.* (2007b) determined that the population is around 286,000 pairs. In 2006, the Great Barrier Island population was considered to be in danger of extirpation because only four nest burrows had been located in recent years, and it was estimated that fewer than 20 pairs continued to breed on the island. However, the populations on Little Barrier and Codfish islands are likely to be increasing (BirdLife International 2007b).

Galapagos petrel (Pterodroma phaeopygia)

The Galapagos petrel is endemic to the Galapagos Islands, Ecuador (BirdLife International 2000), and is currently known to occur on the archipelago's islands of Santa Cruz, Floreana, Santiago, San Cristóbal, and Isabela, which cover a total land area of 2,680 square miles (6,942 km^2, Cruz and Cruz 1987; Vargas and Cruz 2000, as cited in BirdLife International 2000). This species feeds mostly on squid, fish, and crustaceans (Castro and Phillips 1996, as cited in BirdLife International 2000), and has been observed foraging near the Galapagos Islands, as well as east and north of the islands (Spear, *et al.* 1995).

The IUCN classifies the Galapagos petrel as ''Critically Endangered'' (BirdLife International 2006e). The total population is estimated to be 20,000–60,000 birds with a decreasing population trend (BirdLife International 2007e).

Heinroth's shearwater (Puffinus heinrothi)

Very little information is available on the Heinroth's shearwater and its life history. The species' nesting grounds have not been located, but observations of the species indicate that the species breeds on Bougainville Island in Papua New Guinea, and Kolombangara and Rendova Islands in the Solomon Islands (Buckingham, *et al.* 1995, Coates 1985, 1990, as cited in BirdLife International 2000).

The IUCN categorizes this species as ''Vulnerable'' (BirdLife International 2006f). The population is estimated at 250–999 birds, with an unknown population trend; however, there is no substantial evidence of a decline (BirdLife International 2007f).

Previous Federal Action

Section 4(b)(3)(A) of the Act requires the Service to make a finding known as a ''90-day finding'' on whether a petition to add, remove, or reclassify a species from the list of endangered or threatened species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and published promptly in the **Federal Register**. If the Service finds that the petition has presented substantial information indicating that the requested action may be warranted (referred to as a positive finding), Section 4(b)(3)(A) of the Act requires the Service to commence a status review of the species if one has not already been initiated under the Service's internal candidate assessment process. In addition, Section 4(b)(3)(B) of the Act requires the Service to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher-priority listing actions (this finding is referred to as the ''12-month finding''). If the listing of a species is found to be warranted but precluded by higher-priority listing actions, then the petition to list that species is treated as if it is a petition that is resubmitted on the date of the finding and is, therefore, subject to a new 12-month finding within one year. The Service publishes an Annual Notice of Resubmitted Petition Findings (annual notice) for all foreign species for which listings were previously found to be warranted but precluded.

On November 24, 1980, we received a petition (1980 petition) from Dr. Warren B. King, Chairman, United States Section of the International Council for Bird Preservation (ICBP), to add 79 native and foreign bird species to the list of Threatened and Endangered Wildlife (50 CFR 17.11). The species covered by the 1980 petition comprised 19 native species and 60 foreign species, including the six seabird species of the family Procellariidae that are the subject of this proposed rule. In response to the 1980 petition, we published a notice to announce a positive 90-day finding on May 12, 1981 (46 FR 26464) for 77 species, as two of the foreign species identified were already listed under the Act. On January 20, 1984, we published a 12-month finding within an annual review on pending petitions and description of progress on all ESA listing amendments (49 FR 2485). In this notice, we found that listing all 58 foreign bird species on the 1980 petition was warranted but precluded by higher-priority listing actions, however, the species were not listed by name. On May 10, 1985, we published the first annual notice (50 FR 19761) in which we continued to find that listing all 58 foreign bird species on the 1980 petition was warranted but precluded by higher-priority listing actions. In our next annual notice (51 FR 996), published on January 9, 1986, we found that listing 54 species from the 1980 petition, including the six species that are the subject of this proposed rule, continued to be warranted but precluded by higher-priority listing actions, whereas new information caused us to find that listing the four remaining species was no longer warranted. We published additional annual notices of findings on July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), April 25, 1990 (55 FR 17475), November 21, 1991 (56 FR 58664), and May 21, 2004 (69 FR 29354). In addition, on September 28, 1990, we published a final rule (55 FR 39858) to list six species from the 1980 petition to the List of Threatened and Endangered Wildlife.

Per the Service's listing priority guidelines that were published on September 21, 1983 (48 FR 43098), in our April 23, 2007, Annual Notice on

Resubmitted Petition Findings for Foreign Species (72 FR 20184), we determined that listing the six seabird species of family Procellariidae was warranted. The six species were selected from the list of warranted but precluded species for two reasons. First, this family grouping includes more high priority species than any other taxonomic family group in our list of warranted but precluded species; and, second, because of the significance and similarity of the threats to the species. Combining taxonomically related species that face similar threats into one proposed rule allows us to maximize our limited staff resources and thus increases our ability to complete the listing process for warranted-but-precluded species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1533 (a)(1)) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists of endangered and threatened wildlife and plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Chatham petrel, Cook's petrel, Fiji petrel, Galapagos petrel, magenta petrel, and Heinroth's shearwater follow.

Chatham petrel (Pterodroma axillaris)

A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

The range of this species changes intra-annually based on an established breeding cycle. During the breeding season (November to June) (NZDOC 2001b), breeding birds return to breeding colonies to breed and nest. During the non-breeding season, birds migrate far from their breeding range where they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range, and (2) the species' non-breeding habitat and range.

BirdLife International (2007a) estimates the range of the Chatham petrel to be 436,000 km^2 (168,300 mi^2); however, BirdLife International (2000) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Because this reported range includes a large area of non-breeding habitat (i.e., the sea), our analysis of Factor A with respect to the Chatham petrel's breeding range focuses on the islands where the species is known to breed.

The Chatham petrel breeds primarily on one island (BirdLife International 2000; NZDOC 2001b), the 0.84 square mile (2.18 km^2, Wikipedia 2007k) South East Island in the Chatham Islands (BirdLife International 2000; NZDOC 2001b). In 2002, the NZDOC began efforts to expand the species' breeding range by releasing chicks onto Pitt Island, an island approximately 2.5 km (1.55 mi) northwest of South East Island. Over a four-year time period, 200 chicks were transferred to the 40 ha (98.8 acre) Ellen Elizabeth Preece Conservation Covenant (Caravan Bush), a fenced, predator-free enclosure on Pitt Island. As of 2006, four adult birds had returned to the island from the sea to breed, and in June, 2006, a pair successfully reared a chick. This represents the first time in more than a century that a Chatham petrel chick has fledged on Pitt Island (BirdLife International News 2006).

The Chatham petrel breeds on coastal lowlands and slopes in habitats with low forest, bracken, or rank grass (del Hoyo, *et al.* 1992). It nests in burrows on flat to moderately sloping ground among low vegetation and roots (Marchant and Higgins 1990, as cited in BirdLife International 2000). Since the arrival of European explorers, this breeding habitat has contracted extensively, largely as a result of its conversion to agricultural purposes (NZDOC 2001b; Tennyson and Millener 1994).

We are not aware of any present or threatened destruction or modification of the Chatham petrel's habitat on South East Island. This island is currently un-inhabited by humans (Wikipedia 2007k), and since 1954, it has been managed as a reserve for the Chatham petrel. Access to this island is restricted by permit. In addition, since 1961, all livestock has been removed from the island, allowing the natural vegetation to regenerate (Nilsson, *et al.* 1994). The Chatham petrel's fenced, 40 ha (98.8 acre) release area on Pitt Island is protected by a conservation covenant, and we are unaware of any present or threatened destruction or modification of any of the species' habitat on Pitt Island. Therefore, we find that the present or threatened destruction or modification of the species' breeding habitat is not a threat to the species.

The Chatham petrel's range at sea is poorly known; the species has been recorded on several occasions at sea near South East Island, and has been recorded once 12 km (7.5 mi) south of the island (West 1994). It is believed that the species migrates to the North Pacific Ocean in the non-breeding season, based on the habits of closely related species; however, no sightings have been recorded in the Northern Hemisphere (Taylor 2000). We are unaware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any commercial, recreational, scientific, or educational purpose for which the Chatham petrel is currently being utilized.

C. Disease or Predation

The Chatham petrel's breeding range was reduced extensively following the arrival of European explorers, largely due to predation by introduced species such as rats (*Rattus* spp.), feral cats (*Felis catus*), and weka (*Gallirallus australis*), an introduced bird (Heather and Robertson 1997, as cited in BirdLife International 2000; NZDOC 2001b; Taylor 2000). Although no introduced predators are currently present on South East Island, there is an ongoing risk that predators will be introduced to the island by boats transporting conservation and research staff to the island. Given this risk, combined with the devastating impact introduced predators had on Chatham petrel populations historically, we find that predation by introduced species is a threat to the Chatham petrel on South East Island, the species' primary breeding location.

On Pitt Island, Chatham petrel chicks were released within a 40 ha (98.8 acre) fenced, predator-free breeding habitat. Although this area is fenced, and the threat of predation on nesting Chatham petrels is reduced, introduced predators, such as feral cats and weka, are present on this island (BirdLife International News 2002) and could potentially get inside the fenced area or prey on Chatham petrels that leave the fenced area. Therefore, we find that predation by introduced species is a threat to the Chatham petrel on Pitt Island.

We are unaware of any threats due to predation on Chatham petrels during the non-breeding season while the species is at sea.

The information available suggests that petrels in general are susceptible to a variety of diseases and parasites, particularly during the breeding season, when large numbers of seabirds

congregate in relatively small areas to breed and nest (BirdLife International 2007a; Carlile, *et al.* 2003). However, there are no documented records of diseases impacting the persistence of the Chatham petrel. Therefore, we find that the threat of diseases is not a significant threat to this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Chatham petrel is protected from disturbance and harvest under New Zealand's Wildlife Act of 1953 and its Reserves Act of 1977. The petrel is designated as a Category A species by the NZDOC, which signifies the species is of the highest priority for conservation management (Molloy and Davis 1999). As such, the NZDOC developed a ten-year recovery plan for the Chatham petrel in 2001, with the goals of protecting the species' breeding burrows on South East Island from the broad-billed prion *(Pachyptila vittata)* (see Factor E below) and establishing a reintroduced population elsewhere within the species' historic breeding range (NZDOC 2001b). A measure of the success of this recovery plan is the successful establishment of breeding individuals on Pitt Island (see Factor A above) in 2006, thereby increasing the breeding range of the species. These efforts are beginning to show some success (see Factor E below), but it is too early to know the level of success, because it can take fledged seabirds years to return to their breeding colony to breed and nest (Taylor 2000). Similarly, protection of Chatham petrel burrows has reduced the population impacts resulting from competition with the broad-billed prion (see Factor E below), however, this threat remains the greatest threat to the species.

New Zealand ratified the Agreement on the Conservation of Albatrosses and Petrels (ACAP) in November 2001, which is designed to reduce impacts of fishing operations on populations of Procellariids (ACAP 2001), however the Chatham petrel is not listed in Annex 1 to this Agreement and, therefore, is not protected under this Agreement. Therefore, implementation of this Agreement has not reduced the threat of incidental take of this species in long-line fisheries (see Factor E below).

Therefore we find that existing regulatory protections have not significantly reduced or removed the threats to the Chatham petrel.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Based on the information available, the predominant threat to the Chatham petrel is nest burrow competition between this species and the more abundant broad-billed prion, which numbers around 300,000 individuals. The prion not only occupies potential Chatham petrel burrows, but has been observed actively evicting or lethally attacking eggs, nestlings, and occasionally adults of the Chatham petrel. Such competition has resulted in a high rate of pair bond disruption and a low rate of breeding success in Chatham petrels, despite the high percentage of egg-fertility (BirdLife International 2000; NZDOC 2001b).

To reduce the threat posed by competition with the broad-billed prion on South East Island, the NZDOC has implemented nest site protection efforts for the Chatham petrel, including placement of artificial nest sites and the blockage of burrows to prevent occupation by the broad-billed prion (NZDOC 2001b). During the 2005–2006 breeding season, out of 155 known breeding pairs, 83 percent of the pairs successfully fledged one chick per pair (Wikipedia 2007d). Although these actions are improving the petrel's breeding success (NZDOC 2001b; Taylor 1999, as cited in BirdLife International 2000), only a small proportion of breeding burrows occupied by Chatham petrels have been located and, therefore, protected (Taylor 1999, as cited in BirdLife International 2000). Therefore, we consider nest burrow competition between this species and the broad-billed prion to be a significant threat to the Chatham petrel.

The Chatham petrel's restricted breeding range puts the species at a greater risk of extinction. Breeding colonies were once widespread throughout the Chatham Islands (NZDOC 2001b), a group of about 10 islands within a 24.85 mile [40-kilometer (km)] radius covering a total land area of 373 square miles (966 km^2, Wikipedia 2007c). Currently, however, breeding of this species is restricted to South East Island (BirdLife International 2007a) and, as a result of recent release efforts, Pitt Island (BirdLife International News 2006), a total land area of less than 1 mi^2 (Wikipedia 2007j,k). This habitat area is insufficient for the long-term survival of the Chatham petrel, particularly since breeding pairs, eggs, and nestlings on South East Island, the primary breeding area of this species, face the pervasive threat of nest-site competition with the broad-billed prion. It is estimated that the self-sustainability of the breeding population on Pitt Island as a result of the release program will take longer than four more years to achieve (NZDOC 2001b).

The Chatham petrel's restricted breeding range combined with its colonial nesting habits and small population size of 800–1,000 birds (Taylor 2000) makes the species particularly vulnerable to the threat of adverse random, naturally occurring events (e.g., cyclones, fire) that destroy breeding individuals and their breeding habitat. Fire is a high risk in the Chatham Islands because the climate is very dry during the summer, and the vegetation becomes tinder dry. If fires do occur, the remoteness of the islands renders the fires unlikely to be exterminated by human intervention. Burrow-nesting species such as the Chatham petrel are at a high risk because they are likely to suffocate from smoke inhalation or to be lethally burned inside or while attempting to escape from their burrows (Taylor 2000).

Another natural disaster, severe storms, has impacted New Zealand historically, and so the likelihood of future impacts of storms is high. A severe storm in 1985 stripped two islands in the Chatham Islands chain bare of vegetation and soil cover, causing high increases in egg mortality of nesting albatrosses (Taylor 2000). Considered the worst recorded cyclone in New Zealand's history, Cyclone Giselle hit New Zealand April 10, 1968, with wind speeds of 275 km/h (Wikipedia 2007). Although we are unaware of the impact of this cyclone on the Chatham petrel's population numbers or breeding habitat, the severity of the wind or waves created by such a storm has potential to significantly damage Chatham petrel burrows. These burrows are particularly vulnerable because they are located on coastal lowlands (del Hoyo, *et al.* 1992), and they are extremely fragile, occurring in soft soils (Taylor 2000).

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as fire or storms, the Chatham petrel does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. Therefore, we find that the combination of factors—the species' small population size, restricted breeding range, and likelihood of adverse random, naturally occurring events—to be a significant threat to the species.

We are unaware of any documented cases of incidental take of Chatham petrels by commercial long-line fishing operations or entanglement in marine

debris; however, it is generally recognized that all seabirds are at high risk of injury or mortality when they attempt to take bait from long-line fishing gear. The lack of data on these impacts could be a result of the species' low population number. Dr. Michael Rands, Director and Chief Executive of BirdLife International, has reported that the number of seabirds killed in long-line fishery operations continues to increase, and the long-line fishery, especially operations by unlicensed ''pirate'' vessels, is the single greatest threat to all seabirds [Australian Antarctic Division (AAD) 2007; BirdLife International News 2003]. Therefore, we consider the incidental take of Chatham petrels by commercial long-line fishing operations to be a significant threat to the species.

Conclusion

Predation by introduced species is an ongoing threat to the Chatham petrel, which historically reduced the species' population numbers. Nest burrow competition between the Chatham petrel and the more abundant broad-billed prion is a current, on-going threat to the Chatham petrel that is of high magnitude that has not been controlled by human intervention. The broad-billed prion occupies Chatham petrel burrows, actively evicting or lethally attacking eggs, nestlings, and occasionally adults of the Chatham petrel, and as a result is reducing the Chatham petrel's population which is already very small, estimated at 800–1000 individuals. Although the NZDOC has been actively working to protect Chatham petrel nest sites from the broad-billed prion, only a small proportion of Chatham petrel breeding burrows have been located and protected (Taylor 1999, as cited in BirdLife International 2000). This threat is magnified by the fact that the impacted area is the Chatham petrel's primary breeding location, and the breeding area is extremely small, less than 1 mi^2 in size. The only other location where the species has been documented to breed is the 40 ha (98.8 acre) enclosed area on Pitt Island where Chatham Petrels were reintroduced. It is currently uncertain whether the species will maintain this portion of its range as a breeding area; as of 2006, only one pair breeding in this area had successfully reared a chick.

Once a population is reduced below a certain number of individuals, it tends to rapidly decline towards extinction (Franklin 1980; Gilpin and Soule 1986; Soule 1987). The Chatham petrel's small population, combined with its restricted breeding range and colonial nesting habits makes the species particularly vulnerable to the threat of random, naturally occurring events. These catastrophic events, such as cyclones and fire, are known to occur in New Zealand and have the potential to destroy breeding individuals and their breeding habitat.

The threats within the species' breeding range are compounded by the threat posed by long-line fishing in the species' non-breeding range. Although New Zealand implements measures to protect other seabird species from this threat under the Agreement on the Conservation of Albatrosses and Petrels, the Chatham petrel is not currently offered protection by this Agreement. We are unaware of any documentation on the level of Chatham petrel mortality caused by long-line fisheries; however, the number of seabirds killed in long-line fishery operations continues to increase, and the long-line fishery, especially operations by unlicensed ''pirate'' vessels, is the single greatest threat to all seabirds (AAD 2007; BirdLife International News 2003). Therefore, the magnitude of this threat to the species in its non-breeding range is significant. Because the survival of this species is dependent on recruitment of chicks from its breeding range, the severity of threats to the Chatham petrel within its breeding range puts the species in danger of extinction throughout its range. Therefore, we find the Chatham petrel to be in danger of extinction throughout all of its range. Because we find that the Chatham petrel is endangered throughout all of its range, there is no reason to consider its status in a significant portion of its range.

Fiji petrel (Pterodroma macgillivrayi)

A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

Although little is known about the Fiji petrel and its life history, based on general information common to all other Procellariid species, we know that the range of the Fiji petrel changes intra-annually based on an established breeding cycle. During the breeding season, breeding birds return to breeding colonies to breed and nest. During the non-breeding season, birds migrate far from their breeding range where they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range, and (2) the species' non-breeding habitat and range.

BirdLife International (2007c) estimates the range of the Fiji petrel to be 154,000 km^2 (59,460 mi^2); however, BirdLife International (2000) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Because this reported range includes a large area of non-breeding habitat (i.e., the sea), our analysis of Factor A with respect to the Fiji petrel's breeding range focuses on the island where the species breeds.

Although the nesting area of this species has not been located (Priddel, *et al.* draft), the information available indicates that the species breeds on Gau Island, Fiji, where the few recorded sightings of this species on land have occurred (Priddel, *et al.* draft; RARE Conservation 2006a; Watling and Lewanavanua 1985). The species was originally known from just one specimen collected in 1855 on Gau Island. There were no additional confirmed sightings of the species until 1984 when an extensive, 16-month search on Gau Island revealed one additional sighting. The researchers used spotlights and recorded collared petrel calls in an attempt to attract petrels to the highlands area where the researchers were searching. On the first night of spotlighting, a single Fiji petrel flew into the researchers' light. No additional birds were found on this search expedition (Watling 1986; Watling and Lewanavanua 1985). There have been an additional 16 reported sightings of this species on land, all on Gau Island, and ten additional sightings at sea, however, many of these reports have not been substantiated (Priddel, *et al.* draft). In 2007, Priddell, *et al.* (draft) summarized all these records, specifying which records were credible. The researchers determined that of the 17 recorded sightings on land between 1965 and 2007, 12 were highly credible based on researchers' identification of dead specimens, photographs of specimens, or live specimens. In addition to the sightings on land, there have been ten sightings at sea, all since 1960. However, none of these reports have been substantiated. Based on researcher observation or detailed descriptions, three of these reports are considered by Priddel, *et al.* (draft) to be credible.

We consider the evidence sufficient to conclude that the Fiji petrel breeds on Gau Island because: (1) all 12 substantiated sightings of the species on land have been on Gau Island; (2) Procellariids return to land only for breeding purposes, and (3) the original specimen of this species collected in

1855 was determined to be an immature bird, based on its feathers and skull morphology (Bourne 1981, as cited in Priddel, *et al.* draft; Imber 1985b; Priddel, *et al.* draft); so it is reasonable to believe that its nest was in the vicinity.

Based on the locations of Fiji petrel sightings on Gau Island, the species' breeding habitat is most likely to be undisturbed mature forest on rocky, mountainous ground within the island's cloud forest highlands (del Hoyo, *et al.* 1992; RARE Conservation 2006a). Based on the nesting habits of other colonial seabirds, it has been suggested that Fiji petrels nest in close proximity to collared petrels (*Pterodroma leucoptera*), which nest on the ground in this rugged terrain of interior Gau Island (Watling and Lewanavanua 1985).

In 1985, it was estimated that over 27 square miles (70 km^2) of forest habitat up to 2,346 feet (715 meters) in elevation is potentially suitable for breeding and nesting of Fiji petrels on Gau Island (Watling and Lewanavanua 1985). Unlike the lowlands of Gau Island which have been cleared to a large extent for settlement, agriculture, and forest plantations, the upland interior forests where the species is believed to breed, has not been logged (Priddel, *et al.* draft; Veitayaki 2006). The only maintained inland trail leads to a telecommunication tower on a mountain peak just below Delaco. The 3,115 inhabitants of Gau Island live in coastal villages, where the majority live by subsistence fishing and farming, maintaining gardens up to 300 m in elevation. Although low-level forestry activities occur in lowland areas, no other intensive industry or agriculture is practiced on the island (Priddel, *et al.* draft). Veitayaki (2006) noted that the practice of shifting cultivation on Gau Island using improved machinery and the indiscriminant use of fire is rapidly progressing toward the cloud forests within the interior of the island. However, no information was provided to show this is actually occurring.

Veitayaki (2006), described a community-based conservation project on Gau Island that has been in place since 2001, whereby villagers in the district of Vanuaso Tikina are collaborating with the University of the South Pacific to sustainably manage their environmental resources. Goals of the project include preservation of the upland cloud forest, adoption of sustainable land use practices, protection of drinking water, and development of alternative sources of livelihood. The success of this project has provided momentum beyond the Vanuaso Tikina district, as there is interest in incorporating the same sustainable-use practices in the other villages on Gau Island (Veitayaki 2006).

In 2003, the World Resources Institute (WRI) reported that less than 1% (.88%) of Fiji's total land area is protected to such an extent that it is preserved in its natural condition (Earth Trends 2003a). Gau Island, however, is relatively pristine compared to most areas of Fiji due to the semi-subsistence lifestyle (Veitayaki 2006). The Fiji people show great pride in the Fiji petrel, making it the emblem of the national airline (Air Fiji) and presenting it on the Fijian Fifty-dollar banknote (Priddel, *et al.* draft). Legislation has been drafted to protect the Fiji petrel's habitat on Gau Island, once nesting colonies have been located (RARE Conservation 2006a) (see Factor D, below). Because Gau Island's upland forest habitat, where the species is most likely to breed, remains in a pristine condition and does not appear to be threatened with destruction or modification, we find that the present or threatened destruction, modification, or curtailment of this species' breeding habitat or range is not a threat to the species.

The Fiji petrel's range at sea is poorly known; the species has been recorded once at sea near Gau Island and once at sea 200 km (124.3 mi) north of Gau Island (Watling 2000, as cited in BirdLife International 2000; Watling and Lewanavanua 1985). We are unaware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any commercial, recreational, scientific, or educational purpose for which the Fiji petrel is currently being utilized.

C. Disease or Predation

The greatest threat to the long-term survival of the Fiji petrel is thought to be predation on breeding birds and their eggs and chicks by introduced predators such as rats and feral cats on Gau Island (BirdLife International 2000). Since nesting colonies of Fiji petrels have not been located, predation on the Fiji petrel has not been directly observed. However, cats and Pacific rats (*R. exulans*) have been found in the highland forests of Gau Island, where this species is most likely to breed (Imber 1986, as cited in Priddel, *et al.* draft; Watling and Lewanavanua 1985). The path to the telecommunications transmitter on the summit of Gau Island may have facilitated the movement of feral cats and Pacific and brown rats (*R. norvegicus*) into the Fiji petrel's breeding habitat (Watling 2000, as cited in BirdLife International 2000).

The remains of collared petrels have been found in feral cat scats and killings in the highland forests of Gau Island, where the Fiji petrel is also believed to breed. It is suggested that the collared petrel nests successfully despite this predation threat because its synchronized nesting during the first half of the year swamps cat predation. The collection of a first-flight young of the Fiji petrel on Gau Island in the month of October, however, indicates that this species has a more extended or later breeding season, putting this more sparsely populated species at greater risk of predation (Watling 1986). Cats and rats are known to have caused many local extirpations of other petrel species (Moors and Atkinson 1984, as cited in Priddel, *et al.* draft). According to Priddel, *et al.* (draft) there do not appear to be any inaccessible cliffs or mountainous ledges where Fiji petrels could nest out of the reach of cats or rats.

A feral pig (*Sus scrofa*) population has recently established in southern areas of Gau Island and is considered an emerging threat to the Fiji petrel (Priddel *et al.* draft). Feral pigs have caused the local extinction of other species of seabirds on numerous islands (Moors and Atkinson 1984, as cited in Priddel, *et al.* draft).

Protecting Fiji petrel nest sites from introduced predators by creating barriers around the nests is not possible at this time because the exact location of the nesting sites is unknown. There is no information indicating that predator eradication has been attempted on Gau Island. Even if a predator eradication program were to be implemented, protection of the nest sites would be difficult due to the permanent habitation of humans on the island. Even if cats were prohibited as pets, there is still a high potential for cats and rats to be transported to Gau Island in boats transporting humans or other shipments.

Because the threat of predation by introduced cats and rats has severely impacted closely related petrel species, and there are records of these introduced predators on Gau Island, especially feral cats and rats in the highland forests of Gau where the Fiji petrel is most likely to breed, we find that predation is a significant threat to the Fiji petrel.

We are unaware of any threats due to predation on Fiji petrels during the non-breeding season while the species is at sea.

Although several diseases have been documented in other species of petrels (see Chatham petrel Factor C), disease has not been documented in the Fiji petrel. Therefore, the significance of this threat to the Fiji petrel is unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

Although the Fiji petrel is protected from international trade under Fijian law (Government of Fiji 2002, 2003), this protection has not significantly reduced or removed the threat of predation within the species' breeding range, nor has it reduced the threat posed by long-line fisheries (see Factor E below) within its range at sea.

Community awareness of the conservation significance of the Fiji petrel has been promoted in Fiji. From 2002–2004, Milika Rati, a local conservationist on Gau Island, led a ''Pride campaign'' (RARE Conservation 2006a), a constituency-building program developed by the conservation organization RARE (RARE Conservation 2006b). Ms. Rati chose the Fiji petrel as the flagship mascot for this movement and used a series of high-profile activities to raise awareness of the conservation urgency of the species. This campaign resulted in a confirmed sighting of a Fiji petrel (RARE Conservation 2006a). A follow-up survey to the campaign revealed that 99 percent of the participants believed natural resource protection to be important, and 94 percent were aware that the Fiji petrel is at risk of extinction.

Based on increased public awareness of the Pride campaign, a formal agreement supporting the creation of a bird sanctuary for the species was signed by all 16 of Fiji's village chiefs (RARE Conservation 2006a).

The Australian Regional National Heritage Programme continues to fund the Pride campaign on Gau Island. The Wildlife Conservation Society, BirdLife International, and the National Trust of the Fiji Islands are collaborating to work towards implementation of conservation recommendations made by Ms. Rati, including minimizing predators (RARE Conservation 2006a).

Although the Fiji petrel is protected from international trade (Government of Fiji 2002, 2003) by Fijian law and public awareness and support for the species' protection on Gau Island is strong, these conservation measures have not significantly reduced the threats to the species.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Because of the paucity of recorded sightings of this species (see discussion of Factor A above), the population is apparently very small. The IUCN estimates the population to be less than 50 individuals, with a decreasing trend due to predation by introduced predators (BirdLife International 2007c). Species with such small population sizes are at greater risk of extinction. Once a population is reduced below a certain number of individuals, it tends to rapidly decline towards extinction (Franklin 1980; Gilpin and Soule 1986; Soule 1987).

This species' risk of extinction is further compounded by its restricted current breeding range, which according to the best available information is limited to Gau Island, where an estimated 27 square miles (70 km^2) of potential breeding habitat is available. However, based on what is known about the species, this is considered a relatively small amount of appropriate habitat for breeding, particularly since breeding pairs, eggs, and nestlings on Gau Island face the pervasive threat of predation by introduced species such as feral cats and rats.

The Fiji petrel's restricted breeding range combined with its colonial nesting habits and small population size of less than 50 birds (BirdLife International 2007c) makes the species particularly vulnerable to the threat of adverse random, naturally occurring events (e.g., cyclones, flooding, and landslides) that destroy breeding individuals and their breeding habitat. Fiji is vulnerable to the devastating affects of cyclones inter-annually between November and April. On average, 15 cyclones affect this country each decade (World Meteorological Organization 2004). The most severe cyclone in within the past 100 years was cyclone Kina in January, 1993, with wind speeds of 120 knots spanning an area 180 miles (289.7 km) from its center. The Government of Fiji declared the area a disaster, because virtually all areas of Fiji were impacted by this cyclone and the associated flooding (UN Department of Humanitarian Affairs 1993). Landslides are common in Fiji's mountainous areas during these severe weather conditions (World Meteorological Organization 2004), and would be particularly threatening to breeding Fiji petrels and their breeding habitat.

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as cyclones, the Fiji petrel does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. One such event could destroy the entire known breeding population on Gau Island.

Therefore, we find that the combination of factors—the species' small population size, restricted breeding range, and likelihood of adverse random, naturally occurring events—to be a significant threat to the species.

Although we are unaware of any documented cases of incidental take of Fiji petrels by commercial long-line fishing operations or entanglement in marine debris, these long-line fishing operations have been identified as a threat to all seabird species (see analysis under Chatham petrel, Factor E). Moreover, the lack of data on these impacts to the Fiji petrel could be a result of the species' low population number. Therefore, we find the incidental take of Fiji petrels by commercial long-line fishing operations to be a significant threat to the species.

Conclusion

The primary threat to the Fiji petrel is most likely predation by introduced feral cats and rats within the species' breeding range. The probability of introduced predators preying on this species is high given that introduced feral cats are documented to prey upon the closely related collared petrel in the interior forests of Gau Island where the Fiji petrel is most likely to nest. Furthermore, the devastating impact of predation by introduced species has been documented in several closely-related species. There is no information indicating that predator eradication has been attempted on Gau Island. This threat is magnified by the fact that the threat likely threatens the species throughout its breeding range, the interior forests of Gau Island. Although the Fiji petrel is legally protected from international trade, to our knowledge Fiji has not successfully implemented measures to protect the species from the threat of predation.

The Fiji petrel's low population size of less than 50 individuals puts the species at a high risk of extinction. The low population size combined with its restricted breeding and colonial nesting habits, typical of all Procellariid species, makes the species particularly vulnerable to the threat of random, naturally occurring events (e.g., cyclones) that are known to occur in Fiji

and have the potential to destroy breeding individuals and their breeding habitat.

The threats within the species' breeding range are compounded by the threat posed by long-line fishing in the species' non-breeding range. There is no information indicating that Fiji has implemented measures to protect the species from long-line fishery activities. However, because the survival of this species is dependent on recruitment of chicks from its breeding range, the severity of threats to the Fiji petrel within its breeding range puts the species in danger of extinction throughout all of its range. Therefore, we find the Fiji petrel to be in danger of extinction throughout all of its range. Because we find that the Fiji petrel is endangered throughout all of its range, there is no reason to consider its status in a significant portion of its range.

Magenta petrel (Pterodroma magentae)

A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range of the Magenta Petrel

The range of this species changes intra-annually based on an established breeding cycle. During the breeding season (September to May) (Imber, *et al.* 1994b; Taylor 1991), breeding birds return to breeding colonies to breed and nest. During the non-breeding season, birds migrate far from their breeding range where they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range, and (2) the species' non-breeding habitat and range.

BirdLife International (2007d) estimates the range of the magenta petrel to be 1,960,000 km^2 (7,568,000 mi^2); however, BirdLife International (2000) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Because this reported range includes a large area of non-breeding habitat (i.e., the sea), our analysis of Factor A with respect to the magenta petrel's breeding range focuses on the islands where the species is known to breed.

The magenta petrel breeds exclusively on Chatham Island, New Zealand, within relatively undisturbed inland forests (Crockett 1994; Imber, *et al.* 1994a). At least 23 breeding burrows have been discovered, all located near the Tuku-a-Tamatea River (BirdLife International 2007d; Brooke 2004, Hilhorst 2000, Taylor 2005, as cited in BirdLife International 2007d). Although some breeding burrows are on private land (Taylor 2000), the majority of known breeding burrows are located within the Tuku Nature Reserve (Reserve) (Chatham Island Taiko Trust 2007). This Reserve was established in 1984 to protect 5 square miles (12 km^2) of magenta petrel breeding habitat. In 1993, 1 square mile (2 km^2) of contiguous forested land was added to the Reserve by covenant, and a second covenant expected to be approved in the near future will protect an additional 4 square miles (11 km^2) of contiguous habitat to the Reserve (Chatham Island Taiko Trust 2007).

As a result of New Zealand's Biodiversity Strategy, initiated in the year 2000, all logging of indigenous forests on government land has been halted, and logging on private land is required to be sustainable (Green and Clarkson 2005). Breeding burrows have been found on private land (Taylor 2000), and sustainable logging practices would not necessarily protect these magenta petrel nest sites. The significant loss of magenta petrel burrows and colonies historically due to the alteration of habitat on Chatham Island for livestock grazing purposes (Crockett 1994) demonstrates the severe impacts that habitat alteration has on magenta petrel populations. Besides logging, fire is a threat to the magenta petrel's breeding habitat. Although the species' recovery plan identifies accidental fire as a threat to the magenta petrel, it does not address mitigation of this threat (NZDOC 2001a). The NZDOC deals with an average of 160 fires in New Zealand each year, suggesting that fires are relatively common in New Zealand (NZDOC n.d.). Taylor (2000) identifies flooding of burrows as a threat, given that most known burrows are in wet areas in valley floors. He also notes that destruction of nest-sites by pigs and dogs accompanying pig-hunters near the burrows threatens the magenta petrel's breeding habitat. These threats to the magenta petrel's breeding habitat are magnified by the species' restricted habitat area on Chatham Island. Because of the very small number of breeding pairs, any loss of breeders from the population would increase the species' threat of extinction. Therefore, we find that the present and threatened destruction of the habitat of this species to be a significant threat to the species.

The magenta petrel's range at sea is poorly known; however, research has documented foraging behavior south and east of the Chatham Islands (Imber, *et al.* 1994a). In addition, because the original specimen of this species was shot at sea eastwards in the temperate South Pacific Ocean, it is believed birds disperse there during the non-breeding season. We are unaware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any commercial, recreational, scientific, or educational purpose for which the magenta petrel is currently being utilized.

C. Disease or Predation

The available information suggests that the most serious threat to the magenta petrel is predation on all life stages (eggs, chicks, and adults) of the species by introduced predators, including feral cats, pigs, weka, and rats. It is reported that periodically the species' entire annual breeding production is lost due to predation of eggs and chicks (BirdLife International 2007d). Permanent eradication of these introduced predators from Chatham Island is difficult due to the permanent habitation of humans on the island. Since the early 1990's, however, the NZDOC has monitored known breeding burrows and has implemented an intensive predator control program, including setting extensive trap lines and poisoning to remove introduced predators from the magenta petrel's breeding areas (Taylor 2000). This effort has significantly reduced the threat of predation on adult petrels, with only two being found dead in 20 years, as of the year 2000. However, a number of chicks are still lost in some seasons (Imber, *et al.* 1998). As additional burrows have been located and protection from predation expanded over the years, breeding has increased and breeding success has improved. In 1994, only four breeding pairs were known, but in 2004, 15 breeding pairs were observed (Brooke 2004, Hilhorst 2000, Taylor 2005, as cited in BirdLife International 2007d). Sixteen chicks were known to have fledged from 1987–2000 (Taylor 2000), and within a single year, 2002, a total of seven chicks fledged (BirdLife International 2007d). Eight birds fledged in the 2005 season, and a record 11 magenta petrel chicks fledged in the 2006 season (Chatham Island Taiko Trust 2006).

Even though the predator control program has decreased the threat of predation to the magenta petrel, birds, especially chicks, are still killed by introduced predators, and only areas where petrels are known to breed are

protected. Therefore, we find predation by introduced species to be a significant threat to the species.

We are unaware of any threats due to predation on magenta petrels during the non-breeding season while the species is at sea.

Although several diseases have been documented in other species of petrels (see Chatham petrel Factor C), disease has not been documented in the magenta petrel. Therefore, the significance of this threat to this species is unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

The magenta petrel is protected from disturbance and harvest under New Zealand's Wildlife Act of 1953 and its Reserves Act of 1977. The petrel is designated as a Category A species by the NZDOC, which signifies the species is of the highest priority for conservation management (Molloy and Davis 1999). As such, the NZDOC developed a ten-year recovery plan for the magenta petrel in 2001, with the goals of preventing further loss of known breeding pairs, maximizing productivity at known breeding burrows, locating and protecting additional burrows, and establishing an additional predator-proof breeding area in southern Chatham Island (NZDOC 2001a). A measure of success of the recovery plan has been demonstrated by the successful protection of breeding pairs and increased productivity resulting from predator control efforts (see Factor C above). However, the threat of predation on magenta petrels by introduced species remains the greatest threat to the species. In 2006, a second protected area was established near the southern coast of Chatham Island at a location where magenta petrels were known to have bred in reasonable numbers 90 years ago. This 7.5-ha area, protected by landowner covenant, has been fenced to exclude livestock in an effort to allow the forest to recover. Within this area, 3 ha are enclosed by a predator-proof fence. Loudspeakers were placed on the site, and pre-recorded magenta petrel calls are being played to attract young males to the ground where it is hoped they will begin to dig burrows and eventually find a mate to breed. It is too early to know the success of this effort because it is anticipated that it will take several years for breeding to begin once young males start digging burrows. Captive rearing studies of the closely related grey-faced petrel (*P. macroptera*) have been undertaken, and its diet analyzed, to develop methods for captive rearing of magenta petrels in captivity should it ever be necessary to 'rescue' abandoned or malnourished magenta petrel chicks (NZDOC 2001a; Taylor 2000).

New Zealand ratified the Agreement on the Conservation of Albatrosses and Petrels in November 2001, which is designed to reduce impacts of fishing operations on populations of Procellariids (ACAP 2001), however the magenta petrel is not listed in Annex 1 to this Agreement and, therefore, is not protected under this Agreement. Therefore, implementation of this Agreement has not significantly reduced or removed the threat of incidental take of this species in long-line fisheries (see Factor E below).

Therefore, we find that regulatory protections have not significantly reduced the threats to the magenta petrel.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The magenta petrel population is extremely small, estimated at 120 individuals based on population surveys (Brooke 2004, Hilhorst 2000, Taylor 2005, as cited in BirdLife International 2007d) and is believed to be decreasing due to predation by introduced species (BirdLife International 2007d). The fact that it took 10 years of intensive searching to rediscover the species in 1978 is an indication of the rarity of the species. Species with such small population sizes are at greater risk of extinction. Once a population is reduced below a certain number of individuals, it tends to rapidly decline towards extinction (Franklin 1980; Gilpin and Soule 1986; Soule 1987).

This species' risk of extinction is compounded by its restricted breeding range, which is limited to Chatham Island. Based on what is known about the species, the breeding habitat available on Chatham Island is a relatively small amount of appropriate habitat for breeding, particularly since breeding pairs, eggs, and nestlings on Chatham Island continue to be threatened by introduced species such as feral cats and rats.

The magenta petrel's restricted breeding range combined with its colonial nesting habits and small population size of less than approximately 120 birds makes the species particularly vulnerable to the threat of adverse random, naturally occurring events (e.g., storms, fire) that destroy breeding individuals and their breeding habitat (NCDOC 2001b). Fire is a high risk in the Chatham Islands because the climate is very dry during the summer, and the vegetation becomes tinder dry. Burrow-nesting species such as the magenta petrel are at a high risk because they are likely to suffocate from smoke inhalation or to be lethally burned inside or while attempting to escape from their burrows (Taylor 2000).

Another natural disaster, severe storms, has impacted New Zealand historically (see Chatham petrel discussion of Factor E), and so the likelihood of future impacts of storms is high. Although we are unaware of the impact of previous cyclones on the magenta petrel's population numbers or breeding habitat, the severity of the wind or waves created by such storms or flooding associated with storms has potential to significantly damage magenta petrel burrows. These known burrows are particularly vulnerable to flooding because they are located on valley floors (NZDOC 2001a).

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as fire or storms, the magenta petrel does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. One such event could destroy the entire known breeding population on Chatham Island. Therefore, we find that the combination of factors—the species' small population size, restricted breeding range, and likelihood of adverse random, naturally occurring events—to be a significant threat to the species.

Although we are unaware of any documented cases of incidental take of magenta petrels by commercial long-line fishing operations or entanglement in marine debris, these long-line fishing operations have been identified as a threat to all seabird species (see analysis under Chatham petrel, Factor E). Moreover, the lack of data on these impacts to the magenta petrel could be a result of the species' low population number. Therefore, we find the incidental take of magenta petrels by commercial long-line fishing operations to be a significant threat to the species.

Conclusion

Predation by introduced species such as rats, weka, and feral cats and pigs is a current, on-going threat to the magenta petrel that is of high magnitude that has not been controlled by human intervention. These introduced predators are known to destroy magenta petrel eggs, chicks, and adults, reducing the species' population (NZDOC 2001a), which is already very small, estimated

at 120 individuals. Although the NZDOC has been actively working to protect magenta petrel nest sites from predation by introduced species, a number of chicks are still lost in some seasons (Imber, *et al.* 1998), and the breeding burrows that have not yet been located are not protected. This threat is magnified by the fact that a limited amount of breeding habitat is protected from habitat alteration or destruction. The breeding habitat that is protected remains at risk from accidental fires and flooding.

The magenta petrel's low population size of approximately 120 individuals puts the species at a high risk of extinction. The low population size combined with its restricted breeding habitat and colonial nesting habits makes the species particularly vulnerable to the threat of random, naturally occurring events (e.g., cyclones, fire) that are known to occur in New Zealand and have the potential to destroy breeding individuals and their breeding habitat. One such event, such as a cyclone during the nesting season could destroy the entire breeding population on Chatham Island.

The threats within the species' breeding range are compounded by the threat posed by long-line fishing in the species' non-breeding range. Although New Zealand implements measures to protect other seabird species from this threat under the Agreement on the Conservation of Albatrosses and Petrels, the magenta petrel is not currently offered protection by this Agreement. Because the survival of this species is dependent on recruitment of chicks from its breeding range, the severity of threats to the magenta petrel within its breeding range puts the species in danger of extinction throughout all of its range. Therefore, we find the magenta petrel to be in danger of extinction throughout all of its range. Because we find that the magenta petrel is endangered throughout all of its range, there is no reason to consider its status in a significant portion of its range.

Cook's petrel (Pterodroma cookii)

A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

The range of this species changes intra-annually based on an established breeding cycle. During the breeding season, which appears to vary by population (Taylor 2000), breeding birds return to breeding colonies to breed and nest. During the non-breeding season, birds migrate far from their breeding range where they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range, and (2) the species' non-breeding habitat and range.

BirdLife International (2007b) estimates the range of the Cook's petrel to be 76,300,000 km^2 (29,460,000 mi^2); however, BirdLife International (2000) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Because this reported range includes a large area of non-breeding habitat (i.e., the sea), our analysis of Factor A with respect to the Cook's petrel's breeding range focuses on the islands where the species is known to breed.

The Cook's petrel breeds on Little Barrier, Great Barrier, and Codfish Islands in the Chatham Islands, New Zealand, covering a total land area of 126 square miles (327 km^2, Wikipedia 2007e,g,h). The species breeds on steep slopes near ridge tops at 984 feet (300 m) above sea level or higher and prefers unmodified forest habitat with low, open canopies (Rayner, *et al.* 2007b). Fire is unlikely to be a threat to this species' breeding habitat because Cook's petrels breed primarily in damp forests (Imber 1985a, as cited in Taylor 2000). Breeding burrows are usually long and deep among tree roots and are not easily collapsed; so trampling by introduced species is not likely to be a threat to Cook's petrel nest sites (Taylor 2000).

According to the best available information, a large amount of suitable habitat is available to the Cook's petrel on the three islands where it breeds. Of these islands, the largest, the Great Barrier Island covering 110 square miles (285 km^2), is the only one that has a permanent human population. This small population of 1,100 people is located primarily within coastal settlements, away from the species' breeding habitat. Inhabitants mostly make a living from farming and the tourist industry, but the island is not considered a major tourist destination due to its relative remoteness (Wikipedia 2007g). There is no indication that the Cook's petrel's breeding habitat on Great Barrier Island is threatened with human-induced habitat destruction or modification.

The other two islands, Little Barrier and Codfish Islands, covering 11 and 5 square miles (28 km^2 and 14 km^2), respectively, are wildlife sanctuaries with restricted access. These islands are not inhabited by humans aside from rotational conservation staff (Wikipedia 2007e,h). Therefore, the Cook's petrel's breeding habitat on these islands is not threatened with human-induced habitat destruction or modification.

In 2004, the Maungatautari Ecological Island Trust prepared ''An Ecological Restoration Plan for Maungatautari,'' which outlined suggested restoration of habitat and the removal of threats to attract or reintroduce Cook's petrel to the North Island in the Chatham Islands chain (McQueen 2004). The Trust has established a 13 square mile (34 km^2) predator exclosure to protect nest sites, and research is now underway to investigate reintroduction of the Cook's petrel to Maungatautari (Rayner, *et al.* 2007a). If successful, this effort would expand the breeding range of the species.

Based on the lack of identified threats to the Cook's petrel's breeding habitat within its breeding range, we find that the present or threatened destruction, modification, or curtailment of the species' habitat or range is not a threat to the species.

During the non-breeding season, the Cook's petrel migrates to the east Pacific Ocean, primarily between 34 °S and 30 °N (Heather and Robertson 1997, as cited in BirdLife International 2000). We are unaware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any commercial, recreational, scientific, or educational purpose for which the Cook's petrel is currently being utilized.

C. Disease or Predation

The introduction of predatory species by European settlers is believed to have contributed to the historical population decline in this species. The best available information indicates that the Codfish Island population declined due to predation by an introduced bird, the weka (Marchant and Higgins 1990, as cited in BirdLife International 2000). In 1934, there were an estimated 20,000 breeding pairs on Codfish Island, but weka predation reduced the population to 100 pairs by 1984 (Bartle, *et al.* 1993, as cited in Taylor 2000). On Little Barrier and Great Barrier Islands, introduced feral cats and the Pacific rat reduced population numbers. The black rat (*R. rattus*) also contributed to the decline on Great Barrier Island (Heather and Robertson 1997, Marchant and Higgins 1990, as cited in BirdLife International 2000; Taylor 2000).

Due to extensive predator eradication programs implemented by NZDOC, by

1980, feral cats had been eradicated from Little Barrier Island. By 1985, weka had been eradicated from Codfish Island (Taylor 2000). Rats had been successfully eradicated from Codfish Island by 1998 and from Little Barrier Island by 2006 (NZDOC 2006).

Although the introduced predators that threaten Cook's petrels have been eradicated from Little Barrier and Codfish Islands, introduced predators have not been removed from Great Barrier Island. As a result, the Cook's petrel population on Great Barrier Island, which has been reduced to 20 breeding pairs, continues to be severely threatened by introduced feral cats, the black rat, and the Pacific rat (Marchant and Higgins 1990, as cited in BirdLife International 2000), and the risk of local extinction of this species is high. Loss of this population would decrease the genetic diversity of the species, increasing the species' risk of extinction.

Even on Little Barrier and Codfish Islands where introduced predators have been removed, there is a continued risk that predators will be re-introduced to the island by boats transporting conservation and research staff to the islands. Given the magnitude of the devastation these species have, once introduced, and the likelihood that they could be re-introduced, we find introduced predators to be an ongoing threat to Cook's petrel populations on Little Barrier and Codfish Islands.

We are unaware of any threats due to predation on Cook's petrels during the non-breeding season while the species is at sea.

Although several diseases have been documented in other species of petrels (see Chatham petrel Factor C), disease has not been documented in the Cook's petrel. Therefore, the significance of this threat to this species is unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

The Cook's petrel is protected from disturbance and harvest under New Zealand's Wildlife Act of 1953 and its Reserves Act of 1977. The petrel is designated as a Category C species by the NZDOC, which signifies the species is a third priority species for conservation management (Molloy and Davis 1999). As discussed in Factor C above, predator eradication efforts have not adequately reduced the threat of predation on the species.

New Zealand ratified the Agreement on the Conservation of Albatrosses and Petrels in November 2001, which is designed to reduce impacts of fishing operations on populations of Procellariids (ACAP 2001), however the Cook's petrel is not listed in Annex 1 to this Agreement and, therefore, is not protected under this Agreement. Therefore, implementation of this Agreement has not significantly reduced or removed the threat of incidental take of this species in long-line fisheries (see Factor E below).

Because the available regulatory protections have not significantly reduced the threats to the Cook's petrel, and this species is a lower priority species for intensive conservation management, we find that regulatory protections have not significantly reduced the threats to the species.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Although we are unaware of any documented cases of incidental take of Cook's petrels by commercial long-line fishing operations or entanglement in marine debris, these long-line fishing operations have been identified as a threat to all seabird species (see the Chatham petrel Factor E). Therefore, we consider the incidental take of Cook's petrels by commercial long-line fishing operations to be a significant threat to the species.

Conclusion

The primary threat to the Cook's petrel is predation by introduced feral cats, the black rat, and the Pacific rat within the species' breeding range, particularly on Great Barrier Island. Eradication of introduced predators on this island is difficult due to the permanent habitation of humans on the island; so this threat on Great Barrier Island is likely to persist. This threat, combined with the low number of breeding pairs (approximately 20) on Great Barrier Island is likely to result in local extinction.

The threats within the species' breeding range are compounded by the threat posed by long-line fishing in the species' non-breeding range. Although New Zealand implements measures to protect other seabird species from this threat under the Agreement on the Conservation of Albatrosses and Petrels, the Cook's petrel is not currently offered protection by this Agreement. Because the survival of this species is dependent on recruitment of chicks from its breeding range, the threats to this species within its breeding range put the species at risk.

The overall population number of the Cook's petrel is not low, and the two largest populations of this species, those breeding on Little Barrier and Codfish Islands, with 50,000 and 100 pairs, respectively are reported to be increasing (Marchant and Higgins 1990, as cited in BirdLife International 2000; Taylor 2000). As a result, the species does not currently appear to be in danger of extinction. However, there is a high risk of local extinction on Great Barrier Island within the foreseeable future. The loss of the breeding birds on Great Barrier Island would not only impact the overall species' population growth but would decrease its genetic variability, increasing the Cook's petrel's risk of extinction throughout its range. Therefore, we find that the Cook's petrel is likely to become in danger of extinction within the foreseeable future throughout all of its range. Because we find that the Cook's petrel is likely to become in danger of extinction within the foreseeable future throughout all of its range, there is no reason to consider its status in a significant portion of its range.

Galapagos petrel (Pterodroma phaeopygia)

A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

As in other Procellariid species, the range of the Galapagos petrel changes intra-annually based on an established breeding cycle. During the breeding season, breeding birds return to breeding colonies to breed and nest. During the non-breeding season, birds migrate far from their breeding range where they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range, and (2) the species' non-breeding habitat and range.

BirdLife International (2007e) estimates the range of the Galapagos petrel to be 14,200,000 km^2 (5,483,000 mi^2); however, BirdLife International (2000) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Because this reported range includes a large area of non-breeding habitat (i.e., the sea), our analysis of Factor A with respect to the Galapagos petrel's breeding range focuses on the island where the species breeds.

The Galapagos petrel is known to breed on the islands of Santa Cruz, Floreana, Santiago, San Cristóbal, and Isabela within the Galapagos archipelago (Cruz and Cruz 1987; Harris 1970). The species breeds in the humid and thickly vegetated uplands of these islands (Harris 1970) at elevations

between 984 and 2,953 feet (300 and 900 meters) (Baker 1980, as cited in BirdLife International 2000; Cruz and Cruz 1987, 1996). The species prefers to nest under thick vegetation in sufficient soil for burrowing (Harris 1970). The species is known to nest within burrows or natural cavities on slopes, in craters, in sinkholes, in lava tunnels, and in gullies (Baker 1980, as cited in BirdLife International 2000; Cruz and Cruz 1987, 1996).

On the island of Santa Cruz, the Galapagos petrel historically bred at lower elevations, down to 180 meters (590.6 feet). However, habitat modification of these lower elevations for agricultural purposes restricted the Galapagos petrel's use of these lower elevation areas for breeding. On San Cristóbal Island, historical clearance of vegetation in highland areas for intensive grazing purposes drastically reduced the species' breeding habitat on the island (Harris 1970).

In 1959, Ecuador designated 97% of the Galapagos land area as a National Park, leaving 3% of the remaining land area distributed between Santa Cruz, San Cristóbal, Isabela, and Floreana Islands. The park land area is divided into various zones signifying the level of human use (Parque Nacional Galapagos Ecuador n.d). Although the islands where the Galapagos petrel is known to breed includes a large 'conservation and restoration' zone, all of these islands, except Santiago, include a significant sized 'farming' zone (Parque Nacional Galapagos Ecuador n.d), where agricultural and grazing activities continue to threaten the Galapagos petrel's habitat and range. According to Baker (1980, as cited in BirdLife International 2000), at least half of the Galapagos petrel's current breeding range on Santa Cruz Island is farmed. The rationale for maintaining farming zones within the Galapagos National Park is to sustain the economy of island inhabitants and encourage local consumption of traditional products (e.g., vegetables, fruits, and grazing animals) (Parque Nacional Galapagos Ecuador n.d).

The primary threat to the Galapagos petrel's breeding habitat is destruction of breeding habitat by introduced feral mammals, such as goats (*Capra hircus*), pigs, donkeys (*Equus asinus*), and cattle (*Bos taurus*). These species trample and destroy Galapagos petrel nest-sites, and reduce breeding habitat by overgrazing (e.g., goats) and uprooting (e.g., pigs) the vegetation (Cruz and Cruz 1987, 1996; Eckhardt 1972).

In 1997, the Galapagos National Park Service (GNPS) and the Charles Darwin Foundation initiated 'Project Isabela,' an ecological restoration program which required removal of all feral goats from Santiago and northern Isabela Islands [Note: northern Isabela is separated from southern Isabela by a 12 km-wide lava field (Charles Darwin Foundation 2006)]. In 2006, the GNPS announced that no feral goats could be found in these areas, noting that monitoring efforts would continue to ensure successful eradication [Charles Darwin Research Station (CDRS) 2006]. Concurrent with the goat eradification program, feral donkeys were removed from Santiago Island and Alcedo Volcano on northern Isabela Island (Carrion, *et al.* 2007). After a 30-year eradication program, feral pigs were successfully removed from Santiago Island, with the last pig being shot in April, 2000 (Cruz,*et al.* 2005).

Despite the success of these eradication efforts, introduced species, especially feral goats, continue to threaten Galapagos petrel habitat on the human populated islands of Santa Cruz, Floreana, San Cristóbal, and southern Isabela. Feral goats are especially problematic in areas bordering farmland, and eradication of feral livestock in these human population areas is difficult (CDRS 2006).

Based on the widespread and ongoing threats of farming activities and introduced species to the Galapagos petrels' breeding habitat, we find that the present and threatened destruction of this species' breeding habitat is a threat to the species.

The Galapagos petrel's range at sea is poorly known; however, research has documented foraging behavior around the Galapagos islands, as well as east and north of the islands. We are unaware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any commercial, recreational, scientific, or educational purpose for which the Galapagos petrel is currently being utilized.

C. Disease or Predation

The threat of predation on the Galapagos petrel is exemplified by the rapid decline of populations of this species in the early 1980s as a result of predation by introduced species, such as dogs (*Canis lupus familiaris*), cats, pigs, and black and brown rats (BirdLife International 2007e; Cruz and Cruz 1996), supplemented by natural predation by the Galapagos hawk (*Buteo galapagoensis*) (Cruz and Cruz 1996). In some cases, these population declines were as high as 81 percent over four years (BirdLife International 2007e). From 1980 to 1985, the population on Santa Cruz Island declined from an estimated 9,000 pairs to 1,000 pairs (Baker 1980, as cited in BirdLife International 2000; Cruz and Cruz 1987). During the same time period, the Santiago Island population declined from 11,250 pairs to less than 500 pairs (Cruz and Cruz 1987; Tomkins 1985, as cited in BirdLife International 2000), and the number of birds breeding on Floreana Islands was estimated to have been reduced by up to 33% annually for four years (Coulter, *et al.* 1981, as cited in BirdLife International 2000).

Introduced feral dogs, cats, and pigs are common predators of all life stages (eggs, chicks, fledglings, and adults) of the Galapagos petrel (Cruz and Cruz 1987, 1996). Eggs and hatchlings are eaten by black and brown rats (BirdLife International 2007e). Adding to predation by introduced species, the Galapagos hawk has been known to further reduce population numbers; young and aged petrels are particularly vulnerable to this predator. In 1985, monitoring of 510 adult Galapagos petrels on Santiago Island showed that the species' mortality rate due to predation by pigs and Galapagos hawks was greater than 50 percent (BirdLife International 2007e).

Predator control and petrel monitoring programs are currently in place on Floreana, Santa Cruz, and Santiago Islands (Vargus and Cruz 2000, as cited in BirdLife International 2000). Eradication efforts to remove feral pigs, which eat nestlings, juvenile, and adult petrels on Santiago Island, succeeded by the end of 2000 (Cruz, *et al.* 2005). Re-colonization of pigs on Santiago Island is not likely since the island is not inhabited by humans, and there are no farming zones on the island where pigs could be placed. Predation by introduced rats and cats continue to pose a predation threat to Galapagos petrels on Santiago Island, compounded by predation by the Galapagos hawk. Efforts are underway on Santiago Island to remove introduced rats, but there is no information to indicate that eradication has been achieved.

Although pigs were removed from Santiago Island, they continue to threaten the Galapagos petrel on the other four islands where the petrel is known to breed. Although predation by pigs, as well as cats, rats, and dogs, on Floreana and Santa Cruz Islands continues to threaten the Galapagos petrel, predator control efforts have been initiated on these two islands and are beginning to show some success in

reducing the threat to Galapagos petrels. For example, prior to predator control efforts on Floreana Island, only 33 percent of the banded Cerro Pajas colony of the Galapagos petrel population returned to breed and nest as adults (Coulter, *et al.* 1982, as cited in Cruz and Cruz 1990a). In 1982, predator control was initiated on this island (Cruz and Cruz 1990a), and by 1985, return rates for banded birds was 80–90 percent due to the predator control program (Cruz and Cruz 1990a). To emphasize the significance of such a reduction in predation on adults, with respect to petrel population growth, the Hawaiian dark-rumped petrel (*Pterodroma sandwichensis*), a species related to the Galapagos petrel, exhibited a 5 percent annual decline in its population size when adult survival rates were reduced as low as 10 percent (Simons 1984).

There is no information to indicate that there have been predator control efforts on San Cristóbal or Isabela Islands where cats, rats, dogs, and pigs continue to threaten the species.

Although the threat of predation by pigs on Santiago Island has been eliminated and the threat of predation is being reduced on Floreana and Santa Cruz Islands, the Galapagos petrel continues to be threatened by one or more predators on all of the islands within the species' breeding range. This threat has been shown to result in rapid population declines. Therefore, we find predation to be a threat to the Galapagos petrel.

We are unaware of any threats due to predation on Galapagos petrels during the non-breeding season while the species is at sea.

While several diseases have been documented in other species of petrels (see Chatham petrel Factor C), disease has not been documented in the Galapagos petrel. Therefore, the significance of this threat to this species is unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

Ecuador is a member of ACAP, which is designed to reduce impacts of fishing operations on populations of Procellariids (ACAP 2001), however the Galapagos petrel is not listed in Annex 1 to this Agreement and, therefore, is not protected under this Agreement. Therefore, implementation of this Agreement has not significantly removed or reduced the threat of incidental take of this species in long-line fisheries (see Factor E below).

Ecuador designated the Galapagos Islands as a national park, and the islands were declared a World Heritage Site in 1979 (BirdLife International 2000); however these protections have not eliminated the threat of predation nor the threat of nest-site destruction by livestock (BirdLife International 2007e).

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Oil and chemical spills can have direct effects on Galapagos petrel populations, and based on previous incidents, we consider this a significant threat to the species. For example, on January 16, 2001, a tanker ran aground at Schiavoni Reef, about 2,625 feet (800 meters) from Puerto Baquerizo Moreno on San Cristóbal Island (Woram 2007). By January 28, 2001, the slick reached the islands of Isabela and Floreana. Only one Galapagos petrel from Cristóbal Island is documented to have died; however, 370 large animals were reported to be contaminated by oil. The total effect of the oil spill on Galapagos petrels and other species is difficult to quantify for a variety of reasons. Due to the behavior of ocean-dependent species and the high toxicity of diesel, many affected animals might have died and sunk undetected. In addition, the effects of oiling may be highly localized, given the vastness of the Galapagos coastline, thereby making detection unlikely. Finally, because the long-term effects of oiling were not monitored, the total mortality from this event is likely underestimated (Lougheed, *et al.* 2002).

Although we are unaware of any documented cases of incidental take of Galapagos petrels by commercial long-line fishing operations or entanglement in marine debris, these long-line fishing operations have been identified as a threat to all seabird species (see the Chatham petrel discussion of Factor E). Therefore, we consider the incidental take of the Galapagos petrel by commercial long-line fishing operations to be a significant threat to the species.

Barbed wire fences on agricultural lands cause mortality in adult Galapagos petrels (BirdLife International 2007e). With the exception of Santiago Island, agricultural lands are present throughout the species' breeding range. Although there is no information available regarding the numbers and trends of mortality due to fences, this source of mortality in combination with other threats from long-line fishing operations and chemical and oil spills poses a significant risk to the survival of the species.

There is evidence that the productivity of Galapagos petrel populations is indirectly affected by fluctuations in ocean temperatures and currents, which impact the Galapagos petrel's prey base. During the El Niño-Southern Oscillation (ENSO) of 1982–1983, Cruz and Cruz (1990b) found that the growth rate of Galapagos petrel chicks was lower and fledging occurred later than in other years. These so-called ''ENSO chicks'' reached a lower peak mass at a later age than non-ENSO chicks. The extended nestling period and reduced growth rates of ENSO chicks are believed to reflect a decline in the availability of food resources because of diminishing ocean productivity during the ENSO. No information is available on the long-term effect on petrel population productivity due to this change in ocean temperatures and currents, and, therefore, the significance of this threat to the Galapagos petrel is indeterminate.

Conclusion

In the 1980's, the Galapagos petrel declined as much as 81% in four years due primarily to predation by introduced predators. According to BirdLife International (2007e), conservation efforts have slowed but not halted the population decline. Despite predator control efforts, the Galapagos petrel continues to be threatened by one or more predators on all of the islands within the species' breeding range. The Galapagos petrel's breeding habitat is also threatened by introduced species, especially feral goats, on the islands of Santa Cruz, Floreana, San Cristóbal, and southern Isabela, where barbed wire fences contribute to the decline in the number of adult Galapagos petrels.

The threats within the species' breeding range are compounded by the threats to the species within its range at sea. Oil spills can have direct effects on Galapagos petrel populations, and based on the occurrence of a previous incident within the species' range at sea, we consider this a significant threat to the species. Incidental take from long-line fishing in the species' range at sea is an additional threat to the species. Although Ecuador implements measures to protect other seabird species from this threat under the Agreement on the Conservation of Albatrosses and Petrels, the Galapagos petrel is not currently offered protection by this Agreement. Because the survival of this species is dependent on recruitment of chicks from its breeding range, the threats to this species within its breeding range puts the species at risk.

The overall population number of the Galapagos petrel is not low, estimated at 20,000 to 60,000 birds (BirdLife International 2007e). As a result, the species does not currently appear to be in danger of extinction. However, as the population numbers continue to decline

as a result of the threats discussed above, the risk of extinction of this species continues to increase. Therefore, we find that the Galapagos petrel is likely to become in danger of extinction within the foreseeable future throughout all of its range. Because we find that the Galapagos petrel is likely to become in danger of extinction within the foreseeable future throughout all of its range, there is no reason to consider its status in a significant portion of its range.

Heinroth's shearwater (Puffinus heinrothi)

A. The Present or Threatened Destruction, Modification, or Curtailment of the Habitat or Range

Although little is known about Heinroth's shearwater and its life history, based on general information common to all other Procellariid species, we know that the range of the species changes intra-annually based on an established breeding cycle. During the breeding season, breeding birds return to breeding colonies to breed and nest. During the non-breeding season, birds migrate far from their breeding range where they remain at sea until returning to breed. Therefore, our analysis of Factor A is separated into analyses of: (1) The species' breeding habitat and range, and (2) the species' non-breeding habitat and range.

BirdLife International (2007f) estimates the breeding range of Heinroth's shearwater to be 400,000 km^2 (154,400 mi^2); however, BirdLife International (2000) defines ''range'' as the ''Extent of Occurrence, the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred, or projected sites of present occurrence of a species, excluding cases of vagrancy.'' Because this reported range includes a large area of non-breeding habitat (i.e., the sea), our analysis of Factor A with respect to the Heinroth's shearwater's breeding range focuses on the islands where the species is most likely to breed.

Although the nesting area of this species has not been located, the information available indicates that the species breeds on Bougainville Island in Papua New Guinea and the islands of Kolombangara and Rendova in the Solomon Islands, where the few recorded sightings of this species have occurred (Buckingham, *et al.* 1995, Coates 1985, 1990, Iles 1998, as cited in BirdLife International 2000). The species was originally known from a few historic specimens from Watom, Papua New Guinea, suggesting historical breeding there, but there have been no recent records from this island. More recently, two birds were captured inland on Bougainville Island. One of these birds was described as being recently fledged; so it is reasonable to believe that its nest was in the vicinity (Hadden 1981, as cited in BirdLife International 2000). The conclusion that the bird breeds on Bougainville Island is further supported by recent observations in the seas around this island, including one flock of 250 birds (Coates 1985, 1990, as cited in BirdLife International 2000). It is also reasonable to conclude that breeding occurs on Kolombangara Island, because recently up to nine birds were recorded off this island where all timed records have been in the afternoon or evening, the time when breeding birds of this species typically return to their nest sites from foraging excursions (Buckingham, *et al.* 1995, Gibbs 1996, Scofield 1994, as cited in BirdLife International 2000). Although not as conclusive as the other two sites due to only one observation, the species is also likely to breed on nearby Rendova Island, where one bird was seen flying out of the mountains at dawn. Since Procellariids occupy land only to breed, it is reasonable to conclude that this bird was leaving its nest site.

Based on the locations of inland sightings of the Heinroth's shearwater and a comparison to closely-related species, it is believed this species breeds in high mountains (Buckingham, *et al.* 1995, as cited in BirdLife International 2000). The three islands where this species is likely to breed are all mountainous, volcanic islands in a wet tropical climate.

Bougainville Island is 9,317.8 km^2 (3,598 mi^2) in size (United Nations System-Wide Earthwatch 1998a), is thickly vegetated, and rugged. There are extensive areas of undisturbed lowland and montane rainforest. Most of the 175,160 people travel by foot or small boat, and live by subsistence agriculture and fishing [Central Intelligence Agency (CIA) 2007a; United Nations System-Wide Earthwatch 1998a; Wikipedia 2007a]. Exploitation of Papua New Guinea's natural resources has been hindered due to the islands' rugged terrain and the high cost of developing infrastructure (CIA 2007a). We are, therefore, unaware of any present or threatened destruction, modification, or curtailment of the Heinroth's shearwater's current breeding habitat on Bougainville Island.

The forests on the islands of Kolombangara and Rendova, with land areas of 687.8 km^2 (265.6 mi^2) and 411.3 km^2 (158.8 mi^2, United Nations System-Wide Earthwatch 1998b,c), respectively, are threatened by deforestation. Timber is the Solomon Islands' most important export commodity. Unsustainable forestry practices, combined with clearing of land for agricultural and grazing purposes and over-exploitation of wood products for use as fuel, is resulting in the destruction of vast areas of forest throughout the Solomon Islands (CIA 2007b). All the lower slopes on Kolombangara Island have been logged except for one 500 m (1,640 feet) strip (United Nations System-Wide Earthwatch 1998b). In 2003, the World Resources Institute reported that none of the Solomon Island's total land area is protected to such an extent that it is preserved in its natural condition (Earth Trends 2003b). Because forests on the islands of Kolombangara and Rendova are the likely breeding habitat of the Heinroth's shearwater and these forests are being reduced through deforestation, we find that the destruction of the Heinroth's shearwater's breeding habitat on these two islands is likely to threaten the survival of the species.

The Heinroth's shearwater's range at sea is poorly known; up to 20 birds have been reported in the Bismarck seas, ranging to the Madang Province on the north coast of Papua New Guinea (Bailey 1992, Clay 1994, Coates 1985, 1990, Hornbuckle 1999, as cited in BirdLife International 2000). Observations have also been reported in the seas around Bougainville Island, including a flock of 250 birds (Coates 1985, 1990, as cited in BirdLife International 2000). We are unaware of any present or threatened destruction, modification, or curtailment of this species' current sea habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are unaware of any commercial, recreational, scientific, or educational purpose for which the Heinroth's shearwater is currently being utilized.

C. Disease or Predation

Although the Heinroth's shearwater's nest sites have not been located, all three islands where the species is most likely to breed have introduced rats, cats, and dogs (Buckingham, *et al.* 1995, as cited in BirdLife International 2000). All these introduced species contributed to drastic declines in the Galapagos petrel (see Galapagos petrel discussion of Factor C), and introduced cat and rats are known to have caused many local extirpations of other petrel species (Moors and Atkinson 1984, as cited in Priddel, *et al.* draft). Although the Heinroth's shearwater is believed to

breed in high, inaccessible mountains, rats have been observed to at least 2,953 feet (900 m) on Kolombangara Island and are a threat to this burrow-nesting species (Buckingham, *et al.* 1995, as cited in BirdLife International 2000).

Available information does not indicate that there have been attempts to eradicate introduced predators from these islands, which would be difficult due to the permanent habitation of humans on the islands. Even if the species were eradicated, there is still a high potential for cats and rats to be transported to the islands in boats transporting humans or other shipments.

Because the threat of predation by introduced rats and feral cats and dogs has severely impacted closely related petrel species, and there are records of these introduced predators on the three islands where the Heinroth's shearwater is most likely to breed, we find that predation is a significant threat to this species.

We are unaware of any threats due to predation on Heinroth's shearwaters during the non-breeding season while the species is at sea.

Although several diseases have been documented in other species of petrels (see Chatham petrel Factor C), disease has not been documented in the Heinroth's shearwater. Therefore, the significance of this threat to the Heinroth's shearwater is unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

No regulatory mechanisms are known that contribute to or reduce or remove threats to this species.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The population of the Heinroth's shearwater is estimated at 250 to 999 individuals, which is considered to be very small (BirdLife International 2007f). Species with such small population sizes are at greater risk of extinction. Once a population is reduced below a certain number of individuals, it tends to rapidly decline towards extinction (Franklin 1980; Gilpin and Soule 1986; Soule 1987).

The Heinroth's shearwater's small population size combined with its colonial nesting habits, as is typical of all Procellariid species, makes this species particularly vulnerable to the threat of adverse random, naturally occurring events (e.g., volcanic eruptions, cyclones, and earthquakes) that destroy breeding individuals and their breeding habitat. All three of the islands where the Heinroth's shearwater is most likely to breed are in a geologically active area resulting in a significant risk of catastrophic natural events. These islands are subject to frequent earthquakes, tremors, volcanic activity, typhoons, tsunamis, and mudslides (CIA 2007a,b). Of these three islands, the species' habitat on Bougainville is at most risk from volcanic activity. There are seven volcanoes on Bougainville that have been active in the last 10,000 years. Bagana is an active volcano that has had 22 eruptions since 1842, with most being explosive. Some of these explosive eruptions have produced extremely hot, gas-charged ash, which is expelled with explosive force, moving with hurricane speed down the mountainside. Bagana has been erupting since 1972, creating slow-moving lava flows (Bagana 2005). These volcanic explosions and lava flows have great potential to destroy Heinroth's shearwaters and their breeding habitat in the mountainous areas where they are most likely to breed.

Landslides in mountainous area are associated with severe storms that are common in this geographic region (World Meteorological Organization 2004), and would be particularly threatening to breeding Heinroth's shearwaters and their breeding habitat during these extreme weather events.

While species with more extensive breeding ranges or higher population numbers could recover from adverse random, naturally occurring events such as volcanoes or typhoons, the Heinroth's shearwater does not have such resiliency. Its very small population size and restricted breeding range puts the species at higher risk for experiencing the irreversible adverse effects of random, naturally occurring events. Therefore, we find that the combination of factors—the species' small population size, restricted breeding range, and likelihood of adverse random, naturally occurring events—to be a significant threat to the species.

Although we are unaware of any documented cases of incidental take of Heinroth's shearwaters petrels by commercial long-line fishing operations or entanglement in marine debris, these long-line fishing operations have been identified as a threat to all seabird species (see analysis under Chatham petrel, Factor E). Moreover, the lack of data on these impacts to the Heinroth's shearwaters could be a result of the species' low population number. Therefore, we find the incidental take of Heinroth's shearwaters by commercial long-line fishing operations to be a significant threat to the species.

Conclusion

The best available information indicates that the Heinroth's shearwater is threatened by predation by introduced rats, and feral cats and dogs within the species' breeding range. The probability of these introduced predators preying on this species is high given that all these introduced species are on the islands where the species is likely to breed, and rats have been found in some of the high mountainous areas where the Heinroth's shearwater is most likely to nest. Furthermore, the devastating impact of predation by these introduced species has been documented in several closely-related species. Finally, there is no available information that indicates that efforts have been initiated to eradicate introduced predators from the three islands where the species is most likely to breed. This threat is magnified by the fact that this threat likely threatens the species throughout its breeding range.

The Heinroth's shearwater is also threatened on Kolombangara and Rendova Islands, approximately half of its breeding range, by habitat destruction. The species' low population size of 250 to 999 individuals further increases this species' risk of extinction, and combined with its colonial nesting habits makes the species particularly vulnerable to the threat of catastrophic naturally occurring events (e.g., volcanoes) that are known to occur with frequency in the species' breeding range.

The threats within the species' breeding range are compounded by the threat posed by long-line fishing in the species' non-breeding range. There is no available information to indicate that the governments of Papua New Guinea or Solomon Islands have implemented measures to protect the species from long-line fishery activities. Because the survival of this species is dependent on recruitment of chicks from its breeding range, the threats to this species within its breeding range put the species at risk.

Despite the lack of population trend information, due to the species' small population size, the lack of conservation measures and regulatory protections for this species, and the identified threats that have caused declines in closely related species, we find that the threats within its breeding range make the Heinroth's shearwater likely to become in danger of extinction within the foreseeable future throughout all of its range. Because we find that the Heinroth's shearwater is likely to become in danger of extinction within

the foreseeable future throughout all of its range, there is no reason to consider its status in a significant portion of its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that the Chatham petrel, Fiji petrel, Galapagos petrel, magenta petrel, Cook's petrel, and Heinroth's shearwater are not native to the United States, no critical habitat is being proposed for designation with this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the Chatham petrel, Cook's petrel, Fiji petrel, Galapagos petrel, magenta petrel and Heinroth's shearwater. These prohibitions, pursuant to 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes: Harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, for endangered species, and 17.32 for threatened species. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other government agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. We are particularly seeking comments regarding biological information, population status, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species. We also seek comments on the appropriate conservation status for the six bird species addressed in this proposed rule.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. We will also not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203, 703–358–1708.

Final promulgation of the regulations concerning the listing of these species will take into consideration all comments and additional information that we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Chief of the Division of Scientific Authority at the address given above.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**.

Paperwork Reduction Act

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov*.

References Cited

A list of the references used to develop this proposed rule is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this proposed rule is Mary M. Cogliano, Ph.D., Division of Scientific Authority, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding new entries for ''Petrel, Chatham,'' ''Petrel, Cook's,'' ''Petrel, Fiji,'' ''Petrel, Galapagos,'' ''Petrel, magenta,'' and ''Shearwater, Heinroth's'' in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Petrel, Chatham	*Pterodroma axillaris*	Pacific Ocean—New Zealand (Chatham Island).	Entire	E		NA	NA
Petrel, Cook's	*Pterodroma cookii*	Pacific Ocean—New Zealand (Little Barrier, Great Barrier, Codfish Islands).	Entire	T		NA	NA
Petrel, Fiji	*Pterodroma macgillivrayi*.	Pacific Ocean—Fiji (Gau Island).	Entire	E		NA	NA
Petrel, Galapagos	*Pterodroma phaeopygia*.	Pacific Ocean—Ecuador (Galapagos Islands).	Entire	T		NA	NA
*	*	*	*	*	*	*	
Petrel, magenta	*Pterodroma magentae*	Pacific Ocean—New Zealand (Chatham Island).	Entire	E		NA	NA
*	*	*	*	*	*	*	
Shearwater, Heinroth's	*Puffinus heinrothi*	Pacific Ocean—Papua New Guinea (Solomon Islands).	Entire	T		NA	NA
*	*	*	*	*	*	*	

Dated: November 30, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–24347 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071130780–7564–01]

RIN 0648–AU32

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 11

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP). Amendment 11 was developed by the New England Fishery Management Council (Council) to control the capacity of the open access general category fleet. Amendment 11 would establish a new management program for the general category fishery, including a limited access program with individual fishing quotas (IFQs) for qualified general category vessels, a specific allocation for general category fisheries, and other measures to improve management of the general category scallop fishery.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on January 31, 2008.

ADDRESSES: A final supplemental environmental impact statement (FSEIS) was prepared for Amendment 11 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 11, the FSEIS, and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

You may submit comments, identified by 0648–AU32, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: (978) 281–9135, Attn: Peter Christopher
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Scallop Amendment 11 Proposed Rule.''

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at the address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, phone 978–281–9288, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The general category scallop fishery is currently an open access fishery that allows any vessel to fish for up to 400 lb (181.44 kg) of Atlantic sea scallops (scallops), provided the vessel has been issued a general category or limited access scallop permit. This open access fishery was established in 1994 by Amendment 4 to the FMP (Amendment 4) to allow vessels fishing in non-scallop fisheries to catch scallops as incidental catch, and to allow a small-scale scallop fishery to continue outside of the limited access and effort control programs aimed at the large-scale scallop fishery. Over time, the overall participation in the general category fishery has increased. In 1994, there were 1,992 general category permits issued. By 2005 that number had increased to 2,950. In 1994, there were 181 general category vessels that landed scallops, while in 2005 there were over 600.

Out of concern about the level of fishing effort and harvest from the general category scallop fleet, the Council recommended that a **Federal Register** notice should be published to notify the public that the Council would consider limiting entry to the general category scallop fishery as of a specified control date. NMFS subsequently established the control date of November 1, 2004. In January 2006, the Council began the development of Amendment 11 to evaluate alternatives for a limited access program and other measures for general category vessels. The Council held 35 meetings open to the public on Amendment 11 between January 2006 and June 2007. After considering a wide range of issues, alternatives, and public input, the Council adopted a draft supplemental environmental impact statement (DSEIS) for Amendment 11 on April 11, 2007. Following the close of the public comment period on June 18, 2007, the Council adopted Amendment 11 on June 20, 2007.

Amendment 11 would establish criteria and authority for determining the percentage of scallop catch allocated to the general category fleet and would establish the IFQ program. However, these specific allocation amounts have been being developed by the Council as part of Framework 19 to the FMP (Framework 19) which will establish scallop fishery management measures for the 2008 and 2009 fishing years. After proposing the allowable levels of fishing based on updated survey information and fishing mortality targets, the total allowable catches (TACs) described below would be specified through a separate rulemaking for Framework 19. Framework 19 also would specify management measures for the 2008 and 2009 fishing years that would be recommended if Amendment 11 is not approved.

A Notice of Availability (NOA) for Amendment 11 was published on November 30, 2007. The comment period on the NOA ends on January 29, 2008.

Proposed Measures

The proposed regulations are based on the description of the measures in Amendment 11. NMFS has noted several instances where it has interpreted the language in Amendment 11 to account for any missing details in the Council's description of the proposed measures. NMFS seeks comments on all of the measures in Amendment 11, particularly the noted instances.

Limited Access Program for the General Category Fishery

Amendment 11 would require vessels to be issued a limited access general category (LAGC) scallop permit in order to land scallops under general category rules. All general category permits would be limited access, requiring that a vessel owner submit an application demonstrating that the vessel is eligible for the permit. The current general category permits (1A- non VMS, and 1B-VMS permits) would be replaced with three types of LAGC scallop permits: IFQ LAGC scallop permit (IFQ scallop permit); Northern Gulf of Maine (NGOM) LAGC scallop permit (NGOM scallop permit); and incidental catch LAGC scallop permit (Incidental scallop permit).

A vessel would be eligible to be issued an IFQ scallop permit if the owner could document landings of at least 1,000 lb (454 kg) of scallop meats, as verified by NMFS records or documented through dealer receipts, in any fishing year between March 1, 2000, and November 1, 2004, and issuance of a general category scallop permit to the vessel during the fishing year in which the landings were made.

The owner of a vessel who cannot qualify for an IFQ scallop permit, or who elects not to apply for an IFQ scallop permit, could instead be issued a NGOM scallop permit. The NGOM scallop permit would allow the vessel to fish in the NGOM exclusively, defined as the waters north of 42° 20′ N. Lat. A vessel would qualify for the NGOM scallop permit if it had been issued a valid general category scallop permit as of November 1, 2004. There would be no landings eligibility criteria. Vessels issued this permit would be subject to additional restrictions outlined in the description of the NGOM Scallop Management Area below.

A vessel would qualify for an Incidental scallop permit if it had been issued a valid general category scallop permit as of November 1, 2004. There would be no landings eligibility criteria. This provision is intended to allow an incidental level of scallop catch for vessels that meet the permit eligibility, but not the landings criteria. This permit would allow such vessels to possess and land up to 40 lb (18.14 kg) of scallops per trip, and is intended to allow landing of incidental scallop catch. Some vessels that could qualify for an IFQ scallop permit may opt for the Incidental scallop permit because it permits vessels to land an incidental catch of scallops on an unlimited number of trips. In drafting the proposed rule, NMFS presumed that the limited access permit restrictions specified below apply to all three types of LAGC scallop permit, unless specifically excluded in Amendment 11.

Initial Application for a LAGC Scallop Permit

A vessel owner would be required to submit an initial application for a LAGC scallop permit or confirmation of permit history within 90 days of the effective date of the final regulations. The Council recommended the shorter than usual application period to expedite the transition to the IFQ program. The IFQ program cannot be implemented until all IFQ permits are issued because the number of vessels and the contribution factors for all qualified IFQ scallop vessels will be used to determine each vessel's IFQ share of the TAC allocated to IFQ scallop vessels (see ''IFQs for Limited Access General Category Scallop Vessels'' below).

Limited Access Vessel Permit Provisions

Amendment 11 would establish measures to govern future transactions related to limited access vessels, such as purchases, sales, or reconstruction. These measures would apply to all LAGC scallop vessels. Except as noted, the provisions proposed in this amendment are consistent with those that govern most of the other Northeast region limited access fisheries; there are some differences in the limited access program for American lobster.

1. Initial Eligibility

Initial eligibility for an LAGC scallop permit would have to be established during the first year after the implementation of Amendment 11. A vessel owner would be required to submit an application for an LAGC scallop permit or CPH within 90 days of the effective date of the final regulations.

2. Landings History

Amendment 11 specifies landings and permit history criteria that a vessel would have to meet to qualify for LAGC permits. It also specifies that an IFQ scallop vessel would be allocated IFQ based on its best year of scallop landings and the number of fishing years active during the qualification period of March 1, 2000, through November 1, 2004. Amendment 11 specifies that qualifying landings would have to be from the same scallop fishing year (March 1 through February 28/29) that a vessel was issued a general category scallop permit during the qualification period. Therefore, this proposed rule requires that, for any landings to be used in determining eligibility, best year of fishing, years active, and the resulting contribution factor, the vessel must have been issued a general category scallop permit in the fishing year the landings were made.

The best year of scallop landings would be the scallop fishing year during the qualification period with the highest amount of scallop meats landed, provided the vessel was issued a general category scallop permit. Years active would be the number of scallop fishing years during the qualification period that the vessel landed at least 1lb (0.45 kg) of scallops provided the vessel was issued a general category scallop permit. In-shell scallop landings would be converted to meat-weight using the formula of 8.33 lb (3.78 kg) of scallop meats for each U.S. bushel of in-shell scallops, for qualification purposes.

NMFS landings data from dealer reports would be used to determine a vessel's eligibility for an IFQ scallop permit, a qualified IFQ scallop vessel's best year of scallop landings, and years active in the general category scallop fishery. The NMFS permit database would be used to determine permit criteria eligibility for all LAGC scallop permits. Applicants would be allowed to dispute the denial of an LAGC permit, or contribution factor (based on best year and years active), through the eligibility appeals process described below.

3. Confirmation of Permit History (CPH)

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, or been destroyed, or transferred to another person, would be required to apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. Such an application would have to be made within 90 days of the effective date of the final regulations for Amendment 11. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel. To be eligible to obtain a CPH, the applicant would have to show that the qualifying vessel meets the eligibility requirements for the applicable LAGC permit, and that all other permit restrictions described below are satisfied. Issuance of a valid CPH would preserve the eligibility of the applicant to apply for an LAGC permit for a replacement vessel based on the qualifying LAGC scallop vessel's fishing and permit history at a subsequent time. A CPH would have to be applied for in order for the applicant to preserve the LAGC scallop permit eligibility of the qualifying vessel.

Vessel owners who were issued a CPH could obtain a vessel permit for a replacement vessel based upon the previous vessel's history that would utilize the CPH. IFQ associated with a CPH would count toward a vessel owner's overall ownership of IFQ, and would be restricted under the 5–percent ownership cap.

4. Permit Transfers

An LAGC scallop permit and fishery history would be presumed to transfer with a vessel at the time it is bought, sold, or otherwise transferred from one owner to another, unless it is retained through a written agreement signed by both parties in the vessel sale or transfer.

5. Permit Splitting

Amendment 11 adopts the permit splitting provision currently in effect for other limited access fisheries in the region. Therefore, an LAGC scallop permit may not be issued to a vessel if the vessel's permit or fishing history has been used to qualify another vessel for a limited access permit. This means all limited access permits, including LAGC scallop permits, must be transferred as a package when a vessel is replaced or sold. However, Amendment 11 explicitly states that the permit-splitting provision would not apply to the transfer/sale of general category scallop fishing history prior to the implementation of Amendment 11, if any limited access permits were issued to the subject vessel. Thus, vessel owners who sold vessels with limited access permits and retained the general category scallop fishing history with the intention of qualifying a different vessel for the LAGC scallop permit would be allowed to do so under Amendment 11. This differs from the current permit splitting provisions of other limited access fishery regulations, and specifically the Atlantic herring limited access permit splitting provision recently implemented under Amendment 1 to the Atlantic Herring FMP. A vessel with an existing limited access scallop permit (i.e., full-time, part-time, or occasional) that also qualifies for an LAGC scallop permit could not split the LAGC scallop permit from the existing limited access scallop permit.

6. Qualification Restriction

Consistent with previous limited access programs, no more than one vessel would be able to qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history, unless more than one owner has independently established fishing and permit history on the vessel during the qualification period and has either retained the fishing and permit history, as specified above, or owns the vessel at the time of initial application under Amendment 11. If more than one vessel owner claimed eligibility for a limited access permit or CPH, based on a vessel's single fishing and permit history, the NMFS Regional Administrator would determine who is entitled to qualify for the permit or CPH.

7. Appeal of Permit Denial

Amendment 11 specifies an appeals process for applicants who have been denied an LAGC scallop permit. Such applicants would be able to appeal in writing to the Regional Administrator within 30 days of the denial, and any such appeal would have to be based on the grounds that the information used by the Regional Administrator was incorrect.

The appeals process would allow an opportunity for a hearing before a hearing officer designated by the Regional Administrator. The owner of a vessel denied an LAGC scallop permit could fish for scallops under the applicable general category scallop regulations, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the LAGC scallop permit category. The Regional Administrator would issue such a letter for the pendency of any appeal. If the appeal was ultimately denied, the Regional Administrator would send a notice of final denial to the vessel owner; and the authorizing letter would become invalid 5 days after receipt of the notice of denial, but no longer than 10 days after the date that the denial letter is sent.

8. Vessel Upgrades

A vessel issued an LAGC scallop permit would not be limited by vessel size upgrade restrictions if the owner wished to modify or replace the vessel. However, if that vessel has also been issued limited access permits under § 648.4 that have upgrade restrictions (i.e., all other limited access permits issued in accordance with § 648.4), the upgrade restrictions for that fishery would apply to any modification or replacement, unless the permit with the restrictions were permanently relinquished as specified under ''voluntary relinquishment of eligibility,'' below.

9. Vessel Baselines

A vessel's baseline refers to those specifications (length overall, gross registered tonnage net tonnage, and horsepower) from which any future vessel size change is measured. Because there are no vessel size upgrade restrictions, a vessel issued an LAGC scallop permit would not have baseline size and horsepower specifications. However, if that vessel has also been issued limited access permits under § 648.4 that have upgrade restrictions, any size change would be restricted by those baseline specification requirements, unless those permits were permanently relinquished as specified in ''Voluntary relinquishment of eligibility'' below.

10. Vessel Replacements

The term vessel replacement (vessel replacement), in general, refers to replacing an existing limited access vessel with another vessel. This rule would require that the same entity must own both the LAGC scallop vessel (or fishing history) that is being replaced, and the replacement vessel. Unlimited upgrades of vessel size and horsepower through a vessel replacement would be allowed, unless the vessel to be replaced is restricted on upgrades because it has been issued other limited access permits pursuant to § 648.4.

11. Ownership Cap

A vessel issued an IFQ scallop permit could not be allocated more than 2 percent of the TAC allocated to the fleet of vessels issued IFQ scallop permits. In addition, an individual could not have ownership interest in more than 5 percent of the TAC allocated to the fleet of vessels issued IFQ scallop permits. The only exceptions to these ownership cap provisions are if a vessel's initial contribution factor results in the ownership of more than 2 percent of the overall TAC initially upon initial application for the IFQ scallop permit, or if the vessel owner owns more than 5 percent of the overall TAC initially upon initial application for the IFQ scallop permits. This restriction would not apply to existing limited access scallop vessels that also have been issued an IFQ scallop permit since such vessels are already subject to the 5–percent ownership cap for limited access permits and because such vessels would not be permitted to transfer IFQ between vessels.

12. Voluntary Relinquishment of Eligibility

A vessel owner could voluntarily exit the LAGC fishery by permanently relinquishing the permit. In some

circumstances, it could allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their other Northeast Region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel's LAGC scallop permit or CPH is voluntarily relinquished to the Regional Administrator, no LAGC scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history.

13. Permit Renewals and CPH Issuance

A vessel owner must maintain the limited access permit status for an eligible vessel by renewing the permits on an annual basis or applying for issuance of a CPH. All LAGC scallop permits must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued. However, as a condition of the permit, the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any fishing year, or the permit either has been voluntarily relinquished or otherwise forfeited, revoked, or transferred from the vessel. A complete application for such permits must be received no later than 30 days before the last day of each fishing year. A CPH does not need to be renewed annually. Once a CPH has been issued to an individual who has retained the LAGC scallop permit and fishing history of a vessel, it remains valid until it is replaced by a vessel permit through the vessel replacement process.

A vessel's LAGC scallop permit history would be cancelled due to the failure to renew, in which case, no LAGC scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history.

Amendment 11 would implement a cost recovery program, with the payment procedures and details to be established in Framework 19. Under the IFQ program, vessels would be required to pay up to 3 percent of their revenue from scallop landings to offset the cost of managing, enforcing, and implementing the IFQ program, as required by the Magnuson-Stevens Act. Failure to pay cost recovery fees by the specified due date would result in NMFS action invalidating the IFQ scallop permit. If the invalidation of the IFQ scallop permit due to failure to pay for cost recovery fees is not resolved in the course of the applicable fishing year, no IFQ scallop permit could ever be reissued or renewed based on that vessel's permit and fishing history.

Limited Access Scallop Vessels Fishing Under General Category Rules

A vessel issued one of the existing limited access scallop permits (i.e., a full-time, part-time, or occasional scallop permit) may also be eligible to be issued a LAGC scallop permit if it meets the qualification criteria described above. Such a vessel would be allowed to fish under general category regulations when not fishing under the scallop DAS or Area Access programs. Existing limited access scallop vessels were not required to be issued a general category scallop permit. Therefore, to be issued an Incidental or NGOM scallop permit, the limited access vessel would have to have been issued a valid limited access scallop permit as of November 1, 2004. To be issued the IFQ scallop permit, an existing limited access scallop vessel would have to have been issued a valid limited access scallop permit during the period March 1, 2000, through November 1, 2004, and have documented landings of at least 1,000 lb (454 kg) of scallop meats when not fishing under the DAS or Area Access programs, as verified by NMFS records or documentation through dealer receipts. A limited access scallop vessel that does not qualify for a LAGC scallop permit could not fish for, possess, or retain scallops when not fishing under the scallop DAS and Area Access programs. Limited access scallop vessels that also qualify for an IFQ scallop permit would not be permitted to transfer IFQ. Therefore, the general category maximum allocation restriction or the maximum percentage ownership restriction for general category TAC would not apply. The limited access general category permit and IFQ scallop permit could not be split from the limited access scallop permit.

Allocation of the Total Annual Projected Scallop Catch to the General Category Fishery under the IFQ Program

Once the IFQ program is implemented, 5 percent of the total projected annual scallop catch would be allocated to vessels with IFQ scallop permits. This would be calculated by taking the total projected annual scallop catch, then deducting estimated catch by incidental catch general category vessels and the total allowable catch (TAC) in the NGOM. Five percent of the resultant catch would then be allocated to the IFQ scallop fishery. IFQs for IFQ scallop vessels would be derived from the 5–percent TAC allocation. The 5–percent allocation would not apply to current limited access vessels that also have IFQ scallop permits. Limited access scallop vessels with IFQ scallop permits would be allocated 0.5 percent of the total projected annual scallop catch after deduction of incidental catch and the NGOM TAC. IFQs for these vessels would be derived from the 0.5–percent TAC allocation. The remaining 94.5 percent of the total projected annual scallop catch, after deduction of incidental catch and the NGOM TAC, would be allocated for harvest by the current limited access scallop fishery.

IFQs for Limited Access General Category Scallop Vessels

A vessel issued an IFQ scallop permit would be allocated a percentage of the TAC allocated to the IFQ scallop fishery based on the vessel's ''contribution factor.'' The contribution factor for each vessel would be determined by multiplying a vessel's best fishing year of landings during the March 1, 2000, through November 1, 2004, qualification period by an index factor based on the number of years the vessel was active in the scallop fishery during the qualification period. A vessel would be determined to be active in the scallop fishery if it landed at least 1 lb (0.45 kg) of scallops. The index factors for varying levels of participation during the qualification period are: 0.75 for 1year; 0.875 for 2 years; 1.0 for 3 years; 1.125 for 4 years; and 1.25 for 5 years. The index factor is intended to provide more weight in calculating the allocation for vessels that have been participating in the general category fishery for a longer period of time. A vessel's contribution percentage will be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued a limited access general category scallop permit. A vessel's IFQ would be determined by multiplying the TAC for IFQ scallop vessels by the vessel's contribution percentage. IFQ would be issued to owners of CPHs since that vessel's contibution would be included in the determination of IFQs as described below. IFQ associated with CPHs would be transferable.

The following is an example of how a vessel's IFQ would be determined using hypothetical values: A vessel landed 48,550 lb (22,023 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years. The vessel's contribution factor would be equal to 48,550 lb (22,023 kg)*1.25 = 60,687 lb (27,527 kg). For this example, the highest total scallop landings is assumed to be 3.8 million lb (1,724 mt), and the number of qualifying vessels is assumed to be 380. The sum

of the contribution factors for limited access general category scallop vessels is assumed to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel would therefore be 1.45 percent (60,687 lb (27,527 kg) / 4.18 million lb (1,896 mt) = 1.45 percent). The vessel's IFQ would be the vessel's contribution percentage (1.45 percent) multiplied by the TAC allocated to all IFQ scallop vessels. Assuming a TAC equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent × 2.5 million lb (1,134 mt)).

The IFQ program cannot be implemented until all IFQ scallop permits and CPHs have been issued because the calculation of the IFQ shares requires the contribution factors for all qualified IFQ scallop vessels to be totaled. However, eligibility, best year, and the contribution factor for each vessel would be determined upon initial application for a limited access general category scallop permit. This issue is discussed under the ''Measures for the transition period to IFQ'' description below.

IFQ Transfers

IFQ scallop vessel and CPH owners would be allowed to transfer IFQ on a temporary or permanent basis. A temporary IFQ transfer (or lease) would allow one IFQ scallop vessel to combine IFQs to increase fishing opportunity for a single fishing year. A permanent IFQ transfer would permanently move the IFQ from one vessel to another. Since a permanent IFQ transfer would require the vessel to transfer the IFQ scallop permit (and any other permits) to the transferee, the transferring vessel would not be eligible to enter into an agreement to transfer IFQ back to the vessel, unless the vessel replaced another IFQ scallop vessel. Each IFQ allocation would have to be transferred in full before it is utilized, and a vessel that used IFQ in a fishing year could not transfer its IFQ during that fishing year. An IFQ transfer would not be approved if it would result in the receiving IFQ scallop vessel having a share of more than 2 percent of the total TAC allocation to the IFQ fishery. IFQ transfers would not be permitted for existing limited access scallop vessels that also have been issued an IFQ scallop permit.

IFQ Cost Recovery

The Magnuson-Stevens Act requires any IFQ program to include a cost recovery program, whereby NMFS would collect up to 3 percent of ex-vessel value of landed product to cover actual costs directly related to enforcement and management of an IFQ program. The authority and procedures for collection of cost recovery fees would be established in this rule. Further details of the cost recovery program will be proposed in Framework 19, in which TACs would be established for LAGC scallop vessels. As recommended in Amendment 11, the IFQs would be rounded up to the nearest 10–lb unit. The cost recovery fee for an IFQ that was temporarily transferred to another IFQ scallop vessel would be the responsibility of the owner of the transferring IFQ scallop vessel, not the owner of the receiving IFQ scallop vessel.

Measures for the Transition Period to IFQ

Amendment 11 recognizes that it would take between 12 to 24 months to determine the universe of qualified vessels that would be issued an IFQ scallop permit. The time is necessary to accommodate applicants who pursue permits through the appeals process. As a result, it would not be possible to implement an IFQ program at the same time that NMFS is in the process of determining eligibility and contribution factors. Recognizing the problem, Amendment 11 specifies measures for a transition period. The transition measures include a quarterly TAC equal to 10 percent of the total projected scallop catch. Vessels that qualify for an IFQ scallop permit and vessels under appeal for an IFQ scallop permit would be authorized to fish for scallops, subject to the quarterly TAC, with all landings counted toward the TAC. When the TAC is projected to be attained, the general category fishery would close for the remainder of the quarter. Any underage or overage of the first quarter would be applied to the third quarter, and any underage or overage of the second quarter would be applied to the fourth quarter. The quarterly TACs for the 2008 fishing year, beginning March 1, 2008, will be specified in Framework 19. A quarterly TAC is proposed rather than an annual TAC due to concerns about derby fishing. This quarterly distribution of TAC is intended to reduce the negative effects of a race to take the TAC. The 10–percent allocation would result in a TAC that would be consistent with recent projections for scallop mortality from the general category fishery and would account for additional effort expected from vessels under the appeals process.

Mechanism to Allow Voluntary Sectors in the General Category Fishery

The proposed action includes a mechanism to allow the owners of IFQ scallop vessels to form voluntary sectors that would manage their own fishing activity as a group. This rule outlines the procedures that would be used to form a sector, and the sector program requirements. The sector provision includes: Restrictions on participation; definition and requirements for operations plans; specifications for the review, approval, and revocation process; allocation of TAC to sectors; sector share determination; restrictions on sector membership changes; restrictions on interaction between sectors; monitoring and enforcement provisions for sectors; a prohibition on trading of allocation between sectors; restrictions on vessel movement between sectors; a 20–percent maximum total allocation for a single sector. The 400–lb (181.44–kg) possession limit would be maintained for vessels in a sector. The formation of sectors is intended to provide greater flexibility for participants and create outcomes that are more socially and economically relevant for fishing groups within the biological limitations of the fishery (TACs). The 20–percent cap on a sector's share of the IFQ is intended to prevent one sector from controlling an excessive percentage of the general category allocation. Unlike the sector program for the Northeast multispecies fishery, Amendment 11 would not allow sectors to be exempt from any scallop regulations, except that participating vessels would not be restricted by their IFQs.

NGOM Scallop Management Area

The NGOM scallop management area would be waters north of 42°20′ N. Lat. The NGOM scallop management area would be managed separately, because the Council concluded that it has unique characteristics such as smaller vessels and sporadic fishable resource. The NGOM scallop management area would establish scallop fishing controls appropriate for the fishery while protecting the resource in the area from overharvest, if and when scallops are present in the area. Measures include the separate NGOM general category scallop permit and qualification criteria; a TAC based on historical landings from Federal waters in the NGOM; a possession limit of 200 lb (90.72 kg) of scallops per trip, with one trip per calendar day allowed; a provision that an IFQ vessel fishing in the NGOM scallop management area would have scallop landings deducted from its IFQ

and the NGOM scallop management area TAC; and a prohibition on possession of scallops by any vessel, once the NGOM scallop management area TAC is harvested. Amendment 11 does not include specific restrictions for vessels fishing under scallop DAS in the NGOM, except that such vessels could not continue fishing in the NGOM once the TAC for the area has been reached.

Monitoring

All LAGC scallop vessels would be required to install and operate a VMS unit and would be required to declare a general category trip or other fishing activity code, as appropriate. In addition, IFQ and NGOM scallop vessels would be required report scallop landings through VMS. This provision would improve monitoring of an IFQ program by requiring vessels to report their catch, approximate time of landing, and port of landing before crossing the VMS demarcation line in order to enhance enforcement of the IFQ program and NGOM scallop fishery. The report submitted through VMS would include the VTR serial number, amount of scallops on-board, the port of landing, and the approximate time of arrival in port. This monitoring requirement would enable NMFS to monitor the TAC and IFQs on a more real-time basis.

Change Issuance Date of General Category Permit

The issuance date of general category permits would be changed from May 1 to March 1 of each year to be consistent with the scallop fishing year. Synchronizing the issuance of general category scallop permits with the scallop fishing year would make this permit consistent with the existing limited access scallop permit issuance date.

Other Measures

This action would clarify that vessels that are fishing under a Northeast multispecies or monkfish DAS would not be restricted to the 144–ft (43.9–m) net sweep restriction at § 648.52 that currently specifies that a vessel using a net with a sweep greater than 144 ft (43.9 m) cannot fish for, possess, retain, or land more than 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops. The Council recommended this change because the 144–ft (43.9–m) restriction was not intended to apply to vessels fishing for other species that would have an incidental catch of scallops, provided the vessel is issued the appropriate LAGC scallop permit.

Amendment 11 proposes to allow an IFQ scallop vessel to possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line only. Once shoreward of the VMS demarcation line, a vessel could possess only 50 bu (17.62 hL) of in-shell scallops. This measure is proposed because scallop vessel owners and operators testified that it often takes more than 50 bu (17.62 hL) of in-shell scallops to yield 400 lb (181.44 kg) of scallop meats. NMFS notes that similar increases were not specified by the Council for the NGOM possession limits of 200 lb (90.72 kg) of shucked or 25 bu (8.8 hL) in-shell scallops or the 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops. However, given the rationale for the increased possession limit, it would be inconsistent to apply the increased possession limit for only one LAGC scallop permit category or declared fishing activity. Therefore, this proposed rule specifies that vessels fishing for scallops up to 200 lb (90.72 kg) or 25 bu (8.80 hL), or up to 40 lb (18.14 kg) or 5 bu (1.76 hL), could possess up to 50 bu (17.62 hL) or 10 bu (3.52 hL), respectively, seaward of the VMS Demarcation Line.

Finally, this proposed rule would clarify the ownership cap restriction on current limited access vessels specified at § 648.4(a)(2)(i)(M). The ownership cap restriction was implemented through Amendment 4 (59 FR 2757, January 19, 1994). Currently, the regulation states that an individual may not own, or have an ownership interest in, more than 5 percent of limited access scallop vessels. The provision in Amendment 4 is as follows: ''No entity or individual may have ownership interest in more than 5 percent of the total number of scallop permits issued at implementation and through the appeal process.'' However, the current regulations are not clear whether this cap applies to CPHs. Provisions for CPH were implemented in 1995 (60 FR 62224, December 5, 1995), after the 5–percent cap provision in Amendment 4 was implemented. The current regulation does not mention CPHs, which represent sunken or destroyed vessels, or vessels that were sold without fishing and permit history, that are eligible for limited access scallop permits. In terms of future ownership, a CPH is equivalent to a limited access permit. Since it is clear that the Council intended the ownership cap to restrict an owner to having an ownership interest in no more than 5 percent of all limited access scallop permits, this proposed rule would clarify that an individual cannot own more than 5 percent of the limited access permit eligibilities in the form of a limited access permit or CPH. This clarification would make the regulations consistent with the Council's original intent under Amendment 4.

Public comments are solicited on Amendment 11 and its incorporated documents through the end of the comment period, January 29, 2008, stated in the NOA for Amendment 11 (72 FR 67691, November 30, 2007). Public comments on this proposed rule must be received by January 29, 2008, the end of the comment period specified in the NOA for Amendment 11, to be considered in the approval/disapproval decision on the amendment. All comments received by January 29, 2008, whether specifically directed to Amendment 11 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 11. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 11, but will be responded to in the final rule.

Classification

At this time, NMFS has not determined that the amendment this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an FSEIS for Amendment 11; an NOA was published on October 19, 2007. The FSEIS describes the impacts of the proposed Amendment 11 measures on the environment. Since most of the measures would determine whether or not fishers can continue fishing for scallops, and at what level in the future, the majority of the impacts are social and economic. Although the impacts may be negative in the short term, particularly at an individual fisher level, the long-term benefits of a sustainable scallop fishery would be positive. Elimination of the open access fishery is expected to have positive impacts on the biological and physical environment.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Public reporting burden for these collections of information are estimated to average as follows:

1. Initial application for an IFQ scallop permit - 30 min per response;

2. Initial application for an NGOM or Incidental scallop permit - 15 min per response;
3. Completion of ownership cap form for IFQ scallop vessel owners - 5 min per response;
4. Appeal for an LAGC scallop permit and IFQ scallop vessel contribution factor - 2 hr per response;
5. Application for a vessel replacement or confirmation of permit history - 3 hr per response;
6. Purchase and installation of a VMS unit for general category scallop vessels—2 hr per response;
7. IFQ scallop vessel VMS trip notification requirements—2 min per response;
8. NGOM scallop fishery VMS trip notification requirements—2 min per response;
9. Incidental catch vessel VMS trip notification requirements—2 min per response;
10. Pre-landings VMS notification requirements—5 min per response;
11. Application for an IFQ transfer—10 min per response;
12. Electronic payment of cost recovery payment—2 hr per response;
13. LAGC scallop fishery sector applications—150 hr per response; and
14. Sector operations plans—100 hr per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator as specified in **ADDRESSES** above, and by e-mail to *David_Rostker@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities, with data analyzed on a fishing year basis (March 1 through February 28/29). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY**. A summary of the IRFA follows:

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $4.5 million according to the dealer's data for the 2004 and 2005 fishing years. Therefore, there are no differential impacts between large and small entities. According to this information, annual total revenue averaged about $940,065 per limited access vessel in 2004, and over $1 million per limited access vessel in 2005. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $4.5 million per vessel. Average scallop revenue per general category vessel was $35,090 in 2004 and $88,702 in 2005 fishing years. Average total revenue per general category vessel was higher, exceeding $240,000 in 2004 and 2005. According to the preliminary estimates, average revenues per vessel were lower in the first 11 months of 2006 for all permit categories, because of lower scallop landings and prices.

The measures proposed in Amendment 11 would affect vessels with limited access scallop and general category permits. Section 4.4 (Fishery-related businesses and communities) of the Amendment 11 document provides extensive information on the number and size of vessels and small businesses that will be affected by the proposed regulations, by port and state. These affected entities are the owners of 318 vessels that were issued full-time permits in 2006, (including 55 small-dredge and 14 scallop trawl permits); 32 part-time; and 1 occasional limited access permit. In addition, 2,501 permits were issued to vessels in the open access General Category, and more than 500 of these vessels landed scallops during the last 2 years.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains several new collection-of-information, reporting, and recordkeeping requirements. The following describes these requirements.

1. Application Process

NMFS estimates that there would be 500 applicants for an IFQ scallop permit, 200 applicants for a NGOM scallop permit, and 500 applicants for an Incidental scallop permit. Each IFQ scallop permit application would take approximately 30 min per application, while each NGOM and Incidental scallop permit application would take approximately 15 min to process. Consequently, the total time burden for the initial applications would be 425 hr. Amendment 11 estimates that 370 IFQ scallop permit, 190 NGOM scallop permit, and 465 Incidental scallop vessels are expected to qualify and consequently renew their application each year. Permit renewal is estimated to take 15 min per application, on average, for a total burden of 256 hr per year. The 3-year average total public time burden for IFQ, NGOM, and Incidental scallop permit initial applications, and permits renewals would be 312 hr. The labor cost, at an hourly rate of $15, would be $4,680.

To implement the 5–percent IFQ ownership cap, vessel owners would be required to submit an ownership form with each permit renewal. Since there would be an estimated 370 IFQ permits, there would be 370 ownership forms each year. NMFS estimates that it would take 5 min to complete each ownership form; therefore, the annual reporting burden would be 31 hr, or 21 hr, averaged over the first 3 years. At an hourly rate of $15, the annualized time burden would be approximately $315.

About 80 applicants are expected to appeal the denial of their permit application over the course of the 3-month application period. The appeals process is estimated to take 2 hr per appeal, on average, for a total burden of 160 hr. The burden of this one-time appeal, annualized over three years, would be 54 hr. At an hourly rate of $15, the time burden would be approximately $810.

2. Vessel Replacement, Upgrade, and Permit History Applications

A standard form for vessel replacements, upgrades, and permit history applications (RUPH application) would be used for LAGC scallop permits, although vessel upgrades would not apply for LAGC scallop vessels unless the vessel is issued other limited access fishery permits that have upgrade restrictions. With the exception of upgrade restrictions, LAGC scallop vessels would be subject to similar replacement and permit history

restrictions as other Northeast Region limited access fisheries. Completion of an RUPH application requires an estimated 3 hr per response. It is estimated that 100 RUPH applications would be received annually. The resultant burden would be up to 300 hr. At an hourly rate of $15 per hour, the total public cost burden for RUPH applications would be $4,500 per year.

3. New VMS Requirements

This action would require vessels issued any of the LAGC scallop permits to install VMS. Most vessels that qualify for an IFQ scallop permit would have been participating in the directed general category scallop fishery, which already has VMS requirements prior to the implementation of Amendment 11. Therefore, it is likely that most vessels that will qualify for an IFQ permit already have VMS. Vessels that qualify for an Incidental or NGOM scallop permit would not likely be participating in the directed general category scallop fishery. However, vessels that qualify for an Incidental or NGOM scallop permit may already have VMS reporting requirements through other fisheries, particularly the Northeast multispecies fishery. It is possible that some new permit holders would decide to purchase and install new VMS units in order to participate in one of these fisheries. Therefore, NMFS estimates that up to 10 vessels would purchase and install VMS units as a result of Amendment 11. NMFS estimates that it would take 2 hr to purchase each unit, for a total time burden of 20 hr; annualized over 3 years, the burden would be about 7 hr per year. NMFS anticipates that a vessel owner would hire a VMS technician to install the VMS unit; therefore there would be no installation time burden for the vessel owner. At an hourly rate of $15 per hour, the total public cost burden for VMS purchases would be $105 per unit. Since position polling is automated, there is no associated time burden with this reporting requirement.

4. Trip Notification Requirements

Each time a LAGC scallop vessel leaves port or is moved from the dock or mooring, the operator must submit a VMS trip declaration code to notify NMFS of the vessel's fishing activity.

According to 2007 VMS trip declaration data for 1B scallop vessels, approximately 40 percent of the time general category 1B vessels declare a general category scallop trip; the remainder are codes for other activities (if a vessel leaves port, general category regulations require it to declare a trip, regardless of the fishing activity). The 2008 scallop harvest specifications have not yet been finalized, but the proposed IFQ quota is 2.5 million lb (1,134 mt). Assuming each trip harvests the 400–lb (181.4–kg) possession limit, there would be an estimated 6,250 IFQ trip declarations per year, with an additional 9,375 trip declarations for some activity other than scallop fishing, for a total of 15,625 trip declarations. Following each trip, NMFS assumes that the vessel operator would submit a power-down code to reduce polling costs and conserve battery power. NMFS estimates that it takes approximately 2 min to submit a trip declaration or power-down code. NMFS estimates that the IFQ fleet would submit 31,250 VMS declaration codes (15,625 trip declarations and 15,625 corresponding power-down code submissions); therefore, the annual IFQ trip declaration time burden would be 1,042 hr per year. At an hourly rate of $15, this burden would be $15,630.

5. NGOM Notification Requirements

The proposed NGOM TAC is expected to be 64,000 to 100,030 lb (29,030 to 45,373 kg) each year. Assuming each trip lands the 200–lb (90.72–kg) possession limit, and using the upper limit of the proposed TAC, it is projected that there would be up to 500 NGOM trip declarations per year. For economic purposes it is unlikely that a vessel owner would incur the cost of a VMS unit solely to have a NGOM permit. Therefore, assuming these vessels already have VMS reporting requirements for other fisheries, VMS declaration reporting requirements for activities other than NGOM activity have already been accounted for in other PRA collections. The increased reporting burden resulting from the NGOM permit category would be approximately 500 trip declarations and 500 power-down declarations. Assuming each declaration takes approximately 2 min, the annual NGOM trip declaration time burden would be approximately 34 hr. At an hourly rate of $15, this burden would be $510.

6. Incidental Scallop Vessel VMS Notification Requirements

In 2004 and 2005, dealer data indicated that the percent of scallops landed in quantities of 40 lb (18.14 kg) or less was 0.02% and 0.06%, respectively, of the total scallop landings. The average scallop landings on these trips in 2004 and 2005 was 19,363 lb (8,783 kg). Using this average, NMFS estimates that there were approximately 500 general category trips that landed scallops incidental to other fishing. Assuming this rate would remain approximately the same, there would be an estimated 500 Incidental trip declarations made annually. As previously noted, for economic purposes it is unlikely that a vessel owner would incur the cost of a VMS unit solely to have an Incidental scallop permit. Therefore, assuming these vessels already have VMS reporting requirements for other fisheries, VMS declaration reporting requirements for activities other than Incidental scallop permit activity have already been accounted for in other PRA collections. The increased reporting burden resulting from the Incidental scallop permit category would be approximately 500 trip declarations and 500 power-down declarations. Assuming each trip declaration takes approximately 2 min, the annual Incidental scallop trip declaration time burden would be approximately 34 hr. At an hourly rate of $15, this burden would be $510.

7. Pre-landing Notification Requirements

VMS pre-landing notification forms would be required for each IFQ and NGOM scallop trip. Therefore, there would be 6,250 IFQ and 500 NGOM scallop vessel pre-landing notification forms submitted annually. NMFS estimates that it would take 5 min for each of the 6,750 reports, for an annual pre-landing notification time burden of 563 hr. At an hourly rate of $15, this burden would be $8,445.

8. State Waters Exemption Program Requirements

The state waters exemption program enrollment form is estimated to take 5 min to submit through the VMS, the same amount of time as it has taken to enroll through interactive voice response system currently used. State waters exemption program trip declaration requirements are already accounted for in an approved collection under OMB Control No. 0648–0202. Therefore, this burden would not increase the cost to vessel owners declaring into the state waters exemption program.

9. IFQ Transfers

IFQ transfers would apply to IFQ scallop vessels, except that current limited access scallop vessels that also have been issued an IFQ scallop permit would not be permitted to transfer IFQ. Using the Northeast Region's Northeast Multispecies DAS leasing program (OMB Control No. 0648–0475) as a proxy for the response rate for the IFQ transfer program, NMFS anticipates that there would be approximately 75 temporary transfers annually. Each

application would include information from both parties involved in the temporary transfer; therefore there would be two responses per application. NMFS estimates that it would take 5 min per response, or 10 min per temporary IFQ transfer application. Therefore, the estimated burden would be 13 hr. At an hourly rate of $15 / hour, the total public cost burden for temporary IFQ transfer applications would be $195.

The Northeast Multispecies DAS Permanent Transfer Program cannot be easily correlated with the general category permanent transfer program because the Northeast Multispecies Program has a 20–percent conservation tax on all transfers, while there would be no conservation tax on scallop IFQ transfers. Although NMFS anticipates that there would be more IFQ transfers than DAS transfers, IFQ transfers would be restricted by the requirement that no IFQ vessel owner could have an ownership interest in more than 5 percent of the total TAC for IFQ scallop vessels, and no vessel could have more than 2 percent of the total TAC for IFQ scallop vessels at any time. NMFS anticipates that there would be approximately 10 permanent IFQ transfers per year. Each application would include information from both parties involved in the transfer; therefore there would be two responses per application. It is estimated that it would take 5 min per response, or 10 min per permanent transfer application. Therefore, the estimated permanent IFQ transfer burden would be 2 hr. At an hourly rate of $15 per hour, the total public cost burden for permanent quota transfer applications would be $30.

10. Cost Recovery

Since cost recovery for the scallop IFQ program is new, and there are no other current cost recovery programs in Northeast Region fisheries, the burden per response used by the Alaska Region's Alaska Individual Fishing Quota Cost-Recovery Program Requirements (OMB Control No. 0648–0398) was used as a proxy for the scallop IFQ program. Each IFQ permit holder would be required to submit a cost recovery payment once annually, which would take 2 hr per response. Therefore, 370 payments would take 740 hr. At an hourly rate of $15 / hour, the total public cost burden for cost recovery would be $11,100.

11. LAGC Sector Program

NMFS estimates that there could be up to nine sector proposals received over the next three years (2008–2009); five in the first year, two in the 2nd year, and two in the 3rd year. The earliest that the sectors proposed in the 2008 year could be implemented would be the 2009 fishing year. Therefore, these sectors would be required to submit operation plans for the 2010 fishing year.

Any person could submit a sector allocation proposal for a group of LAGC scallop vessels to the Council at least 1 year in advance of anticipated start of a sector program, and request that the sector be implemented through a framework procedure specified at § 648.55. Based upon consultations with the Northeast multispecies sector program, it is estimated it would take 150 hr to prepare and submit a sector proposal. Therefore, the 3-year average annualized time burden for sector proposals would be 450 hr per year. At an hourly rate of $15 per hour, the total public cost burden for sector proposals would be $6,750.

A sector is required to resubmit its operations plan to the Regional Administrator no later than December 1 of each year, whether or not the plan has changed. Based upon consultations with the Northeast multispecies sector program, each operations plan takes approximately 100 hr. The earliest sector operation plans would be submitted in 2010 for the proposals submitted in 2008. Therefore, NMFS estimates it would take 500 hr to submit 5 operation plans. The 3-year average annualized time burden would be 167 hr per year. At an hourly rate of $15 per hour, the annual time burden cost would be approximately $2,500.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

1. Summary of the Combined Economic Impacts of the Limited Access Measures

In summary, the proposed limited access program could have negative economic impacts in the short-term on the estimated 373 vessels that would not qualify for a LAGC scallop permit, with adverse impacts compared to 2005 scallop revenue estimated to be less than 5 percent for 119 vessels, 5 to 49 percent for 58 vessels, and 50 percent or more for 196 vessels. The measures would also have negative impacts on about 153 out of 369 vessels that are estimated to qualify for the IFQ scallop permit, with adverse impacts compared to 2005 scallop revenue estimated to be less than 5 percent for 26 of these vessels, 5 to 50 percent for 70 vessels, and over 50 percent for 57 vessels. Altogether, the proposed measures could reduce total revenues of 381 vessels of more than 5 percent in the short-term. There are several measures in the proposed action, however, to help mitigate and reduce the potential negative impacts on these vessels, as discussed above. Qualifying vessels would be permitted to stack allocation up to 2 percent of the entire general category allocation and to transfer (i.e., lease or buy) IFQ on a permanent or temporary basis. This would enable vessel owners who do not receive an adequate amount of allocation to increase their scallop revenue to mitigate negative impacts. Furthermore, there is a provision to allow the formation of voluntary sectors. It may be beneficial for a group of vessels from a fishing community, for example, to organize and apply for a sector in the general category fishery. Negative impacts on some vessel owners may be mitigated if a vessel would qualify for a NGOM scallop permit that authorizes it to fish for scallops at a reduced level. In addition, many of the vessels that would not qualify for the IFQ scallop permit would qualify for an Incidental scallop permit that would authorize the vessel to land up to 40 lb (18.14 kg) of scallops per trip.

Continuation of the open access fishery under the no action alternative would not guarantee that the affected vessel owners would get more scallop revenue than they could with the proposed limited access program. With continued open access, there would always be the risk of more vessels entering the fishery, with the potential for overfishing of the scallop resource. Overfishing would likely cause a reduction in landings per unit effort, an increase in fishing costs per pound of scallops, and dissipation of the profits for all limited access and general category vessels.

There were also possible future negative effects on the existing limited access scallop vessels with the continuation of the open access program because the need to prevent an increase in overall fishing mortality would at some point reduce the DAS allocations for the limited access fleet to compensate for projected general category catcth. Assuming a scallop harvest of 50 million lb (22,680 mt), an increase in the share of general category landings to 20 percent of the total scallop landings would result in a decline of 17 percent to 21 percent of the net vessel share (as a proxy for profits) for the limited access vessels. Given that, in 2005, the general category landings increased to 14 percent of the total landings from about 5 percent in 2004, a further increase in general category effort could occur without a limited access program. Section 5.4.17.1

and Table 166 of the Amendment 11 document provide details about these impacts.

Because it would prevent further expansion of the general category fishery, the economic impacts of the proposed measures on the 351 existing limited access vessels would be positive both in the short and the long term. Reducing the general category catch from recent levels could increase the total DAS allocations for those vessels, resulting in approximately a 7–percent increase in their revenues compared to the status quo levels. Similarly, the general category limited access program would benefit the current limited access vessels that qualify for an IFQ permit, although the proposed 0.5–percent allocation of the total scallop TAC could lower their landings compared to recent levels (1.5 percent and 0.75 percent of overall scallop landings in 2005 and 2006, respectively).

The overall economic impacts of the limited entry in the medium to long term are expected to be positive for the sea scallop fishery as a whole, compared to taking no action. The proposed action would restrict the estimated number of participants in the general category fishery to 369 vessels that meet the IFQ permit qualification criteria. The allocation of a 5–percent TAC for the general category would cap the fishing mortality from this component of the fleet. The limited access program would also prevent the profits of the qualifiers and limited access vessels from dissipating due to an increase in fleet capacity that would likely occur with continued open access.

2. Summary of the Economic Impacts of the Individual Measures

Two alternatives to the proposed landings qualification criteria were considered: Cumulative annual landings of 100 lb (45.4 kg); and 5,000 lb (2,268 kg). The 100–lb (45.4–kg) landing qualification criteria is estimated to qualify more vessels (548) for limited access and have a lower negative impact on the recent participants than the proposed alternative. On the other hand, by increasing the number of participants, this alternative would result in a lower share of general category TAC for each qualifier and would thus have a negative impact on individual vessels, especially on vessel onwers that have a high dependence on scallop revenue as a source of income. For example, the average allocation per vessel would decline from 5,429 lb (2,462 kg) to 3,650 lb (1,656 kg) per vessel if the poundage criterion was set at 100 lb (45.4 kg) instead of at 1,000 lb (454 kg) for a general category TAC of 2 million lb (907 mt). The alternative 5,000–lb (2,268–kg) landings qualification criterion is estimated to qualify only 188 vessels for limited access and, thus, would increase the share of each qualifier in general category TAC. As a result, average allocation per vessel would increase to 10,638 lb (4,825 kg) with a 2–million-lb (907–mt) general category TAC. Although this alternative would have positive economic impacts on the vessels that had a much higher historical dependence on scallops as a source of their income, it would deny eligibility to a much larger number of vessels that historically derived some revenue from scallop fishery. The proposed 1,000–lb (454–kg) alternative would deny eligibility to a large number of boats that have small landings of scallops (i.e., that landed between 100 and 999 lb (45.4 kg to 453 kg)), while qualifying vessels that depend on scallops to a larger degree.

Qualification Time Period

Eligibility for limited access would require a vessel to have made the required amount of landings in any scallop fishing year during a specified time period. In addition to the proposed March 1, 2000, through November 1, 2004, qualification period, the Council considered two alternative qualification periods: March 1, 1994, through November 1, 2004; and March 1, 2003, through November 1, 2004. The economic impacts of qualification period, combined with the landing criteria, are analyzed in several sub-sections of Section 5.4 of the Amendment 11 document and summarized here. The impacts on the general category permit holders and vessels that qualify for limited access are analyzed in Section 5.4.3 of the Amendment 11 document. The impacts on revenues, fishing costs, average net revenues, crew and vessel shares are analyzed in Section 5.4.5 of the Amendment 11 document, for various levels of general category TAC. The impacts of the proposed 5–yr qualification period and other alternatives on recent participants in the general category fishery are analyzed in Section 5.4.6 of the Amendment 11 document.

The proposed 5–yr qualification period, combined with the 1,000–lb (454–kg) landings criteria, is expected to have positive economic impacts in the short and long term on vessel owners with vessels that qualify for limited access. It would provide access to those general category vessels that were active in the fishery in recent years, as well as to historical participants that were active from March 1, 2000, through November 1, 2004. The proposed 1000–lb (454–kg) poundage criteria and the 5–yr qualification period would qualify 369 vessels, but would deny eligibility to 90 vessels that meet the 1,000–lb (454–kg) criteria for their activity during 1994–1999 fishing years. The economic impacts on these historic participants would be negative in terms of a loss in future potential revenue from scallops, unless they buy a vessel that qualifies for limited access. The proposed 5–yr qualification period would not have any impact on the current income of most of these vessels, given that most have not been active since 2000; only 10 vessels are estimated to have participated in the fishery after the control date (November 1, 2004). The longer qualification period would cause the general category TAC to be divided among a larger number of vessels, most of which were not recently active in the fishery, and vessels that depend on scallops would receive a smaller share than they would with the proposed 5–yr qualification period. This would have negative economic impacts on the vessels that depend on scallops to a larger degree. There are also some measures included in the proposed action that could mitigate some of these adverse economic impacts on non-qualifiers. If these vessels had a permit before the control date, they could obtain an incidental catch permit and land up to 40 lb (18.14 kg) per trip, thus still earn some revenue from scallops. Other vessel owners could chose to obtain an NGOM scallop permit and participate in the NGOM fishery, subject to a possession limit of 200 lb (90.72 kg) per trip and a hard TAC.

The 2–yr qualification period alternative would have restricted eligibility to 277 general category vessels that landed 1,000 lb (454 kg) or more of scallops during the period March 1, 2003, through November 1, 2004, instead of 369 vessels under the proposed action. Although this alternative would result in a larger share per vessel qualified for limited access, it was found to be inequitable to participants who did not fish for scallops in 2003–2004, but did fish in recent years since 2000.

IFQ Vessel Contribution Factor

Under the proposed action, each IFQs vessel's contribution factor would be determined by identifying the year with the highest landings during the qualification time period, and multiplying it by an index that increases as the number of years in which the vessel landed scallops during the qualification time period increases. For example, the index is 0.75 if the vessel

landed scallops in 1year, and 1.25 if the vessel landed scallops in 5 years. Therefore, the proposed action would allocate more pounds to those vessels that were active in the fishery for a longer period of time.

In addition to the proposed measure, the Council considered three alternatives to calculate the contribution factor. One alternative used the vessel's best year of landings during the qualification time period. Another alternative used the vessel's best year multiplied by a lower range of index factor than the proposed action. The third alternative used either the best year of landings during the qualification time period, or the indexed best year of landings during the qualification time period, but capped the contribution at 50,000 lb (22,680 kg) of scallops. The economic impacts of the contribution factor alternatives are analyzed in Section 5.4.7.1 through 5.4.7.2 of the Amendment 11 document.

The alternatives to the proposed option would have distributional economic impacts less favorable to the vessels that were active in the fishery for many years. The alternative that used a lower range of index values (0.9 to 1.10, rather than 0.75 to 1.25) would provide only a slight increase in IFQ share for vessels that were active in the fishery for a long period of time, while only slightly decreasing share for vessels that were in the general category scallop fishery for only 1 year. This would have had more negative impacts on a larger number of vessels that had a longer history in the general category scallop fishery. The alternative allocation based on best year (Section 3.1.2.3.1 of the Amendment 11 document) would have had negative economic impacts on those vessels that had a longer history of participation, since allocation would be determined regardless of years active. For the same reason, this alternative would have had positive economic impacts on those vessels that had a shorter history of participation. The final alternative, which would establish the 50,000–lb (22,680–kg) cap on a vessel's contribution factor, would prevent a vessel from getting a larger share of the fishery even if it had very high historical landings. This alternative would have impacted vessels with higher landings more severely than vessels with lower landings, and was therefore not selected. The proposed alternative using the best-year indexed by the number of years active is intended to help reduce the negative impacts on those participants with an established history and long-term investment in scallop fishing.

Scallop Allocation for LACG Scallop Vessels

The Council considered several ways of allocating IFQ to vessels that qualify for a LAGC scallop permit (excluding NGOM and Incidental scallop vessels). These included: Allocations by vessel in pounds of scallops or number of trips per vessel; allocations to two allocation tiers where every vessel in a tier would receive the same allocation; allocation to three allocation tiers; a fleetwide hard TAC; and a fleetwide hard TAC allocated into either quarters or trimesters. The Council also considered a stand-alone IFQ alternative that would confer eligibility on IFQ vessels based only on past permit issuance, and would use the contribution factor alternative adopted by the Council to allocate a vessel's IFQ. The economic impacts of the allocation alternatives are analyzed in section 5.4.8 of the Amendment 11 document.

Under the proposed action, NMFS would calculate a vessel's IFQ by multiplying the overall general category TAC by the vessel's contribution factor. An example demonstrating the calculation of a vessel's IFQ is provided in the ''IFQs for limited access general category scallop vessels'' section of the preamble of this proposed rule.

The allocation of IFQ would eliminate the derby fishing effect that results from a TAC because an IFQ assures that each vessel can land a given quantity anytime during the fishing year. Vessel owners would have the flexibility to select the time and the area to fish in order to minimize their costs and/or maximize their revenues. Since the fishing effort would be spread over a longer period of time, the price of scallops would be more stable throughout the season. This, combined with the availability of a fresh and/or higher quality scallops over a longer season, would benefit consumers as well as producers. Therefore, the proposed allocation alternative would have positive economic impacts on the vessels that qualify for limited access general category fishery. Although maintaining the 400–lb (181.44–kg) possession limit would cause some inefficiencies and result in higher costs compared to a higher possession limit (alternative 2,000 lb (907 kg) per trip), this provision is intended to help preserve the historical small-boat character of this fleet.

The non-selected alternative that would have allocated a number of trips to each scallop vessel has an advantage over the IFQ alternative because it is easier to monitor and enforce, but could result in either reduced revenue or increased costs for vessels that catch less than 400 lb (181.44 kg) of scallops on any trip, because the trip would have been considered to be used irrespective of amount landed. Another non-selected alternative would have established two permit tiers to which vessels would be assigned based on the level of historical scallop landings. Vessels that had historical landings of less than 5,000 lb (2,268 kg) would have a possession limit of 200 lb (90.72 kg), while vessels that had historical landings greater than 5,000 lb (2,268 kg) would have a scallop possession limit of 400 lb (181.44 kg) per trip. The alternative did not restrict the number of trips that could be taken or pounds that could be landed by vessels within a tier. This alternative would have negative economic impacts on vessels that landed less than 5,000 lb (2,268 kg) and would be restricted to a 200–lb (90.72–kg) possession limit because it would reduce landings from recent historical levels. The three-tiered allocation alternative would allocate equal pounds or trips to each vessel within one of three tiers based on the vessel's historical level of landings, with the pounds or trips allocated to each tier based on the average amount of scallops landed by vessels in each tier. As a result, this alternative would have negative impacts on a vessel in a tier that landed a higher amount of scallops than the average for the tier. The stand-alone alternative would allocate IFQ to a larger number of vessels, but would have negative distributional impacts on vessels that have had higher recent annual landings of scallops. Instead of individual allocation, the alternative that would establish a hard TAC with limited entry vessel permits could lead to a race to fish and market gluts. This could have negative economic impacts, especially on smaller vessels that fish seasonally and cannot access all areas due to the constraints on their capacity. A fleet-wide hard TAC allocated by trimester or by quarter would extend the fishing season and reduce negative impacts from derby fishing and market gluts, to some extent. These alternatives would have larger negative distributional impacts on some vessels compared to the proposed IFQ program, and other vessel allocation alternatives considered, because the opportunity to fish and land scallops would be dependent upon the level of fishing by other vessels. For example, a vessel may not get the opportunity to fish for scallops at all under a quarterly fleetwide TAC alternative if other general category vessels quickly harvest the entire TAC. If such a vessel had landings of scallops before Amendment 11, the vessel would experience scallop

revenue losses compared to alternatives that would allow the vessel to fish for scallops regardless of the scallop fishing activity of other vessels.

Limited Entry Permit Provisions

Amendment 11 includes most of the provisions adopted in other limited access fisheries in the Northeast Region to govern the initial qualification process, future ownership changes, and vessel replacements. For the most part, there is no direct economic impact. The nature of a limited access program requires rules for governing the transfer of limited access fishing permits. The procedures have been relatively standard for previous limited access programs, which makes it easier for a vessel owner issued permits for several limited access fisheries to undertake vessel transactions. The standard provisions adopted in Amendment 11 are those governing change in ownership; replacement vessels; CPH; abandonment or voluntary relinquishment of permits; and appeal of denial of permits. In addition, IFQ scallop vessels would be restricted to a cap on the amount of IFQ they could own. This ownership cap restriction is based on a similar ownership cap provision for current limited access vessels. This action would modify some of the other provisions for LAGC scallop vessels. LAGC scallop vessels would not have any vessel size and horsepower upgrade restrictions for vessel modifications or vessel replacements (unless the vessel has other limited access permits). This action would also allow a vessel owner to retain a general category scallop fishing history prior to the implementation of Amendment 11 to be eligible for issuance of the LAGC scallop permit based on the eligibility of the vessel that was sold, even if the vessel was sold with other limited access permits.

The economic impacts of the limited access permit provisions are analyzed in section 5.4.9 of the Amendment 11 document. Measures allowing vessel owners to appeal limited access permit denials would indirectly benefit all participants by ensuring that only those vessels that provide verification of permit and landings history would qualify and receive allocation based on accurate records. The proposed regulations regarding qualification with retained vessel histories would have positive economic impacts for participants that sold their vessel to another but retained the fishing history. The proposed action would allow a vessel owner to modify a LAGC scallop vessel's size or horsepower without any upgrade restriction, provided that there are no other limited access permits issued to the vessel. This would provide flexibility for the vessel owners to adjust their fishing power under changing fishery conditions. Flexibility with a vessel's size and horsepower could also improve safety at sea. Since the vessels would be allocated individual pounds, this is not expected to impact the total scallop landings or provide an unfair advantage to larger vessels.

Amendment 11 would allow a vessel owner to obtain permanent or temporary transfers of IFQ, up to 2 percent of the total general category allocation per vessel. This would help vessel owners to maintain an economically viable operation if the allocations for separate vessels are too low to generate revenue to cover variable and fixed expenses. It could also allow a vessel owner to sell or lease a small IFQ to another vessel owner, which would generate income from the IFQ without operating costs. This measure, combined with a restriction that an individual could not have an ownership interest in more than 5 percent of the overall TAC, would also prevent a few individuals or corporations from dominating the fishery and would help to redistribute gains from the limited access more equitably among more fishermen. Non-preferred alternatives considered other ways to limit the accumulation of IFQ. One would have allowed two allocations only to be combined, and the other set a cap of 60,000 lb (27,216 kg) total allocation. The selected alternative provided more flexibility while maintaining an overall limit on the amount of IFQ that could be held by a single vessel.

Non-preferred alternatives would have prohibited IFQ transfers, would have maintained vessel size and horsepower upgrade restrictions consistent with other limited access permits (allowed upgrades up to 10 percent in length, and gross and net tonnage, and 20 percent in horsepower), and would have prohibited IFQ transfers, providing less flexibility for vessel owners and reduced economic benefits.

Sectors

Amendment 11 proposes to allow participants in the IFQ scallop fishery to organize voluntary fishing sectors. Amendment 11 specifies sector requirements and the process through which proposals would be submitted to the Council and NMFS. Amendment 11 does not establish sectors—just the process under which future sectors could be proposed. The proposed sector process would provide an opportunity for fishermen to benefit from an economically viable operation when the allocations of individual vessels are too small to make scallop fishing profitable. In comparison, the only alternative to the proposed action would not allow the formation of sectors, decreasing flexibility and eliminating any possible future economic benefits of forming sectors.

Measures for Transition to the IFQ program

Amendment 11 specifies measures that would be implemented for at least 1 year, while the eligibility process for IFQ scallop permits is underway to establish the fleet of IFQ scallop vessels. The economic impacts of the transition period alternatives are analyzed in section 5.4.12 of the Amendment 11 document. The proposed interim alternative would establish the following measures. These would help to prevent a short-term increase in overfishing of the scallop resource by limiting the general category landings to 10 percent of the total scallop landings through specification of a TAC. The proposed action would prevent further expansion in the general category catch and benefit the participants of the general category fishery by providing some adjustment time for general category vessels until the transition period is over. The allocation amounts for many IFQ scallop vessels are likely to be lower with the proposed 5–percent TAC for the IFQ fishery than their recent landings. Although management of the general category fishery by a fleetwide TAC during the transition period would create some derby fishing, the allocation of the total TAC into quarters would reduce derby effects to some extent, and lessen the negative economic impacts associated with derby fishing. A 10–percent fleetwide TAC may not constitute a significant constraint on recent landings, given that only those vessels that qualify for an IFQ permit, or that are under appeal for an IFQ permit, would be authorized to fish during the transition period. General category scallop landings by those vessels that had a permit before the control date were approximately 11 percent of total landings in 2005.

An alternative was considered that would have established an annual fleetwide TAC. It was not selected because the Council believed it would increase the derby effect, with potential negative economic and safety implications. It would increase the likelihood that a vessel would not have the opportunity to fish for scallops because other vessels could rapidly harvest the TAC. Another alternative proposed that the transition year would

have no TAC. It would eliminate the incentives for derby style fishing and the economic impacts of this alternative compared to the status quo would be negligible, provided participation by general category vessels that had a permit before the control date does not increase significantly above the recent levels. On the other hand, it is possible for the number of appeals to be greater than the number of vessels that fished during the recent years, resulting in more vessels participating in the fishery. If this were to happen, and the general category scallop landings increase above 10 percent of total scallop harvest, there could be short-term unexpected increase in fishing mortality on the scallop resource.

NGOM Scallop Management Area

Amendment 11 includes management measures specific to the NGOM scallop management area intended to allow a level of scallop fishing activity to occur outside of the constraints of the IFQ program and some other Amendment 11 provisions for general category vessels. Measures include the establishment of a TAC for the area derived from the Federal portion of the resource; a 200–lb (90.72–kg) possession limit for NGOM and IFQ scallop vessels; a restriction on dredge size; a restriction that catch by IFQ scallop vessels fishing in the area would be deducted from the IFQ scallop vessel's IFQ and from the NGOM TAC; trip declaration requirments; and a closure of the NGOM to all scallop vessels (including current limited access scallop vessels and Incidental scallop vessels) when the NGOM TAC is reached. The economic impacts of the NGOM Scallop Managemetn Area are analyzed in section 5.4.14.4 of the Amendment 11 document. The proposed NGOM Scallop Management Area alternative would have positive economic impacts on a large number of vessels that are not estimated to qualify for the IFQ permit but are estimated to qualify for an NGOM permit. These vessels would have an opportunity to land scallops in this area when the resource conditions are favorable. It would reduce the possession limit for NGOM and IFQ scallop vessels to 200 lb (90.72 kg) per trip to reduce incentives for larger vessels targeting scallops in this area. Although reducing the possession limit would have negative economic impacts on some vessels, the majority of the active vessels that would qualify for the NGOM permit general category permit landed 200 lb (90.72 kg) or less of scallops from any one trip, therefore would not be negatively impacted from 200 lb (90.72 kg) possession limit. In comparison, the no action alternative would have had negative economic impacts for vessels that could not qualify for the IFQ scallop permit.

Under one alternative, Amendment 11 provisions would not have applied to NGOM and the general category vessels would have retained the opportunity to fish for scallops in NGOM and land up to 400 lb (181.44 kg) per trip. The lack of a TAC to limit landings, and the higher possession limit, would have had positive economic impacts on these vessels compared to the proposed alternative. On the other hand, because this alternative would let any vessel obtain a permit to fish in the area, it could lead to an influx of vessels from other areas to participate in the open access fishery in the NGOM. This would have negative impacts on the resource that made it unacceptable.

Another alternative proposed that to qualify for an NGOM scallop permit, a vessel would have to have landed 100 lb (45.4 kg) of scallops during the period March 1, 1994, through November 1, 2004. The NGOM TAC under this alternative would be based on all landings of scallops from the NGOM area (not exclusively the Federal portion of the resource, as in the proposed action). This alternative also would have allowed vessels to continue fishing for up to 40 lb (18.14 kg) of scallops after harvest of the NGOM TAC. This alternative would also provide an advantage to IFQ scallop vessels by allowing them to land 400 lb (181.44 kg) per trip from this area, whereas NGOM scallop vessels could possess and land only up to 200 lb (90.72 kg) per trip. This alternative was not adopted because the qualification criteria would have had very little restriction on participation, would have had excessive administrative costs, and would not promote conservation of the scallop resource within the Gulf of Maine or overall. While it would have qualified more vessels than the proposed measure, the economic opportunity for those vessels would have been diluted by a very large number of qualified vessels fishing for a relatively small TAC.

The no action alternative for the NGOM Scallop Management Area would not distinguish this area from other areas, and all Amendment 11 measures would apply equally throughout the range of the scallop resource. It was not selected because it would have negative impacts on vessels that traditionally fish in the NGOM and that could not qualify for the IFQ permit.

Monitoring Provisions

The economic impacts of monitoring provisions proposed in Amendment 11 are analyzed in section 5.4.15 of the Amendment 11 document. Since general category vessels that land over 40 lb (18.14 kg) are already required to have a VMS onboard, the compliance costs of this action are not expected to be significant. Vessels operating in the Northeast multispecies fishery are also required to have operational VMS units. Some of these vessel also have general category scallop permits and would be expected to qualify for one of the LAGC scallop permits. The majority of general category scallop vessels currently operate VMS as required either by the scallop regulations or the Northeast multispecies fishery regulations. The non-selected interactive voice reporting (IVR) alternative does not have a distinct advantage compared to reporting through VMS. The no action alternative would not have the associated costs of reporting landings, but reporting of scallop catch for each trip is essential to monitor and enforce the IFQ and NGOM scallop fishery measures.

Impacts of Limited Access Fishing under General Category Rules

Amendment 11 provides the opportunity for current limited access vessels (i.e., full-time, part-time, or occasional limited access scallop vessels) to also be issued a LAGC scallop permit, if the vessel meets the qualification criteria. The economic impacts of allowing limited access vessels to continue to fish under general category rules are analyzed in section 5.4.16.1 of the Amendment 11 document. The proposed action would have positive economic impacts on 57 limited access vessels (38 full-time, and 19 part-time and occasional) that Amendment 11 estimates would qualify for an IFQ scallop permit. One non-selected alternative would prevent any limited access vessel from having a general category permit and another would prevent current full-time limited access scallop vessels from fishing under general category rules. This would result in negative economic impacts compared to the proposed alternative for those vessels noted above that have a historical level of participation in the general category fishery while fishing outside of scallop DAS.

Under the proposed allocation to LAGC scallop vessels, 0.5 percent of the overall scallop TAC would be allocated to vessels with IFQ scallop permits that also have been issued a full-time, part-

time, or occasional limited access scallop permit. IFQs for these vessels would be determined from the 0.5–percent TAC allocation. Under the transition measure before the IFQ program is implemented, IFQ scallop vessels that have also been issued a full-time, part-time, or occasional limited access scallop permit would fish under the 10–percent TAC allocated to the general category fleet. The proposed action would have positive economic impacts on those vessels. The 0.5–percent TAC for the limited access qualifiers is less than the percentage share of these vessels in total general category scallop landings in recent years, but almost equal to what was reported in the 2004 fishing year. Under one alternative, scallops landed by limited access vessels under general category rules would be deducted from the 5–percent TAC allocated to the IFQ vessels, negatively impacting the general category vessels that qualify for limited access, with small positive economic impacts on the limited access scallop fleet. This alternative was therefore not selected, and the separate 0.5–percent TAC is proposed.

Allocation Between Limited Access and General Category Fisheries

The Council considered alternative values for the TAC that would be allocated to IFQ scallop vessels (excluding IFQ scallop vessels also issued a full-time, part-time, or occasional limited access scallop permit), equal to 2.5, 5.0, 7.0, 10.0, and 11.0 percent of the overall projected scallop catch. The economic impacts of the various levels of TAC allocation between the limited access and LAGC fishery are analyzed in section 5.4.17 of the Amendment 11 document and have different distributional impacts. The proposed 5–percent general category TAC would have negative economic impacts on many general category vessels compared to status quo management because the fishery landed twice that level in both the 2005 and 2006 fishing years. On the other hand, the 5–percent TAC is higher than the long-term average percentage share of total scallop landings for the general category scallop fishery, which is 2.5 percent of overall scallop landings. The 5–percent allocation corresponds to the highest level reached by the general category fishery before the control date. Therefore, this allocation is consistent with the Council's decision in 2004 to implement a control date recognizing that that the substantial increase in general category fishing effort could lead to overfishing of the scallop resource and reduce economic benefits for everyone. The short-term and long-term economic impacts of the 5–percent TAC, combined with the limited entry program, compared to other alternative allocation amounts are discussed extensively above and are not repeated here.

The proposed action includes several measures that could mitigate some of the adverse economic impacts of the limited access program for general category including the 5–percent TAC. The separate limited entry program for the NGOM is expected to provide an opportunity for owners of vessels that would not qualify for the IFQ scallop permit, but who have historically participated in the NGOM scallop fishery, to fish for scallops at a reduced scale (at a lower possession limit of 200 lb (90.72 kg) per trip) when the resource conditions in this area become favorable. The incidental catch permit would provide opportunity for the vessels that land scallops occasionally up to 40 lb (18.14 kg) per trip, including some vessels that qualify for limited access but received allocations lower than what they could land annually with the incidental permit. Furthermore, Amendment 11 includes a provision to allow vessel owners to combine IFQ allocations through the IFQ transfer program, up to 2 percent of the TAC allocated to the IFQ scallop fishery, so that vessel owners can buy or lease additional IFQ. Similarly, the proposed action to establish a process for sectors in the general category fishery would provide an opportunity for fishermen to benefit from an economically viable operation when the allocations of individual vessels are too small to make scallop fishing profitable.

A lower TAC for general category would have larger negative proportional impacts on general category vessels while potentially increasing the revenues of the limited access fishery by a small percentage. A higher percentage TAC would reduce the negative impacts on general category vessels, but would lower the positive economic impacts on the current limited access.

Incidental Catch Permit

The economic impacts of the proposed Incidental catch permit are analyzed in section 5.4.18 of the Amendment 11 document. The proposed action would create an incidental catch permit for vessels to retain and sell up to 40 lb (18.14 kg) of scallop meats per trip, provided they had been issued a general category scallop permit as of November 1, 2004. The economic impacts of this alternative would be positive on vessels that do not qualify for the IFQ permit because it would allow them to still earn some income from scallops under the incidental catch permit. This measure could also benefit some vessels that qualify for the IFQ permit with low allocations. The owner of such a vessel might elect the Incidental scallop permit because the vessel could land more total pounds of scallops on several 40–lb (18.14–kg) trips than it could under its IFQ.

The only alternative considered was no action, which would allow vessels to possess and land, but not sell, an incidental catch of scallops. This alternative would not provide any source of revenue for vessels that do not qualify for the IFQ or NGOM scallop permit. It also would complicate the Council's and NMFS's ability to determine the overall level of scallop catch from a fleet of vessels without scallop permits because none of the reporting and compliance measures would apply to non-permitted vessels. This could result in more cautious management measures in the future, with possible negative economic impacts on all vessels issued scallop permits.

Changing of the Issuance Date of General Category Permits

Amendment 11 proposes to change the permit issuance date for general category scallop permits from May 1 to March 1, to better align the general category scallop fishery with the scallop fishing year of March 1 through February 28/29. The economic impacts of changing the date that general category permits are issued are analyzed in section 5.4.19 of the Amendment 11 document. Changing the general category permit to March 1 is an administrative change and procedural adjustment for owners accustomed to a May 1 permit renewal. The proposed measure would allow, however, better estimation of the number of participants, the level of effort in the fishery and allocation of TAC by aligning the issuance date with date for the limited access fishery. As a result, the proposed action would have indirect positive economic impacts on the sea scallop fishery.

The Council considered revising the start of the fishing year to May 1 or August 1. This would have had some positive impacts over the long term by better aligning the fishing year with the scallop survey, resulting in updated information on which to base the following year's management. This would increase the confidence in the effectiveness of scallop fishery management measures relative to the scallop fishing mortality goals of the

FMP. On the other hand, these alternatives were strongly opposed by the scallop industry because it would require a change in the business plans of the scallop vessel owners.

Other Measures Included in Amendment 11

Amendment 11 proposes two changes to scallop regulations, including a clarification that the maximum sweep length for trawl gear under the FMP would not apply to vessels fishing for Northeast multispecies or monkfish, and an allowance for general category vessels to possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line. The economic impacts of these measures are analyzed in sections 5.4.20 and 5.4.21 of the Amendment 11 document. Clarification of trawl gear restriction for vessels fishing under a multispecies or monkfish DAS would have positive economic impacts on those general category vessels that catch scallops only incidentally, compared to no action. Setting the possession limit at 100 bu (35.24 hL) seaward of the demarcation line would have positive economic impacts on the general category vessels when they catch scallops with lower meat yield. The only alternative to both of these measures is the no action alternative, which does not provide the benefits of the proposed action noted above.

Change to Ownership Cap Restriction to Account for CPHs

This proposed rule includes a change to the ownership cap restriction for current limited access scallop vessels to clarify that the regulation was intended to apply to limited access scallop permits and CPHs. Currently, if a vessel owner has been issued a CPH, that owner cannot activate that CPH on a vessel if they already own 5 percent of the limited access scallop permits. That owner would therefore have to sell a vessel to activate the CPH. This clarification of the ownership cap to include CPH's does not change this, or the economic impacts of the ownership cap restrictions. There are no alternatives to clarifying the regulation, since the result would be that the scallop regulations would continue to be inconsistent with the intent of the original ownership cap restrictions included in the FMP.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 7, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, definitions for ''limited access general category (LAGC) scallop vessel'' and ''limited access scallop vessel'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Limited access general category (LAGC) scallop vessel means a vessel that has been issued an individual fishing quota (IFQ), Northern Gulf of Maine (NGOM), or incidental catch LAGC scallop permit pursuant to § 648.4(a)(2)(ii). An LAGC scallop vessel may also be issued a limited access scallop permit.

Limited access scallop vessel means a vessel that has been issued a limited access full-time, part-time, or occasional scallop permit pursuant to § 648.4(a)(2)(i). A limited access scallop vessel may also be issued an LAGC scallop permit.

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(I)(*3*), (a)(2) introductory text, (a)(2)(i) introductory text, (a)(2)(i)(M)(*1*), (a)(2)(i)(M)(*2*), (a)(2)(ii), and (e)(1)(iv) are revised, and paragraph (a)(2)(i)(P) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) * * *

(i) * * *

(I) * * *

(*3*) With the exception of combination vessels, a vessel issued a limited access sea scallop dredge permit pursuant to paragraph (a)(2)(i) of this section is not eligible for limited access multispecies permits. This restriction is not applicable to vessels issued an LAGC scallop permit pursuant to paragraph (a)(2)(ii) of this section, unless such vessel has also been issued a limited access scallop permit pursuant to paragraph (a)(2)(i) of this section.

* * * * *

(2) Atlantic sea scallop vessels—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop vessel permit pursuant to this section.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44 kg) of shucked scallops, or 50 bu (17.62 hL) of in-shell scallops per trip, or possesses more than 100 bu (35.24 hL) seaward of the VMS Demarcation Line, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

* * * * *

(M) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel, or a confirmation of permit history, if, as a result of the issuance of the permit or confirmation of permit history, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in a total number of limited access scallop vessels and limited access scallop confirmations of permit history in excess of 5 percent of the number of all limited access scallop vessels and confirmations of permit history at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit or confirmation of permit history, or who were issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 1995 and thereafter, in compliance with the ownership restrictions in paragraph (a)(2)(i)(M)(*1*) of this section, are eligible to renew such permits(s) or confirmation(s) of permit history, regardless of whether the renewal of the permits or confirmations of permit history will result in the 5 percent ownership restriction being exceeded.

* * * * *

(P) *VMS requirement.* A vessel issued a limited access scallop permit, as specified in paragraph (a)(2)(i) of this section, except a vessel issued an occasional scallop permit that is not fishing in a sea scallop access area, must have an operational VMS installed. Prior to issuance of a limited access scallop permit, NMFS must receive a signed VMS certification from the vessel owner and be notified by the VMS vendor that the unit has been installed and is operational.

(ii) *LAGC scallop permits.* With the exception of any vessel that fishes exclusively in state waters for scallops, any vessel of the United States that is not in possession of a limited access scallop permit pursuant to paragraph

(a)(2)(i) of this section, and any vessel issued a limited access scallop permit that fishes for scallops outside of the scallop DAS program described in § 648.53 or the Area Access program described in § 648.60, any vessel that fishes for, possesses, or lands scallops must be issued an LAGC scallop permit and must comply with the permit requirements described in paragraphs (a)(2)(ii)(A), (B), or (C) of this section. To be issued an LAGC scallop permit, a vessel owner must meet the qualification criteria specified in paragraphs (a)(2)(ii)(D) or (F) of this section and must comply with the application procedures specified in paragraph (a)(2)(ii)(H) of this section.

(A) *Individual fishing quota LAGC permit.* To possess or land up to 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops per trip, or possess up to 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line, a vessel must have been issued an individual fishing quota LAGC scallop permit (IFQ scallop permit). Issuance of an initial IFQ scallop permit is contingent upon the vessel owner submitting the required application and other information to demonstrate that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(D) of this section.

(B) *Northern Gulf of Maine LAGC permit.* To possess or land up to 200 lb (90.72 kg) of shucked or 25 bu (8.81 hL) in-shell scallops per trip, or to possess up to 50 bu (17.62 hL) seaward of the VMS demarcation line, a vessel must have been issued a Northern Gulf of Maine LAGC scallop permit (NGOM scallop permit). A vessel issued a NGOM scallop permit may not fish for scallops south of 42°20′N. Lat, and may not possess or land more than 200 lb (90.72 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops at any time, except the vessel may possess up to 50 bu (17.62 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial NGOM scallop permit is contingent upon the vessel owner submitting the required application and other information to demonstrate that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(F) of this section.

(C) *Incidental catch LAGC permit.* To possess or land up to 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) in-shell scallops per trip, or possess up to 10 bu (3.52 hL) in-shell scallops per trip seaward of the VMS demarcation line, but not more than these amounts per trip, a vessel must have been issued an incidental catch general category scallop permit (Incidental scallop permit). A vessel issued an incidental catch general scallop permit may not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops at any time, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line. Issuance of an initial incidental catch category scallop permit is contingent upon the vessel owner submitting the required application and other information to demonstrate that the vessel meets the eligibility criteria specified in paragraph (a)(2)(ii)(G) of this section.

(D) *Eligibility for an IFQ scallop permit.* A vessel is eligible for and may be issued an IFQ scallop permit if it meets both eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section, or is replacing a vessel that meets both the eligibility criteria specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section. A vessel owner may appeal NMFS's determination that a vessel does not meet the requirements specified in paragraphs (a)(2)(ii)(D)(*1*) and (*2*) of this section by complying with the appeal process, as specified in paragraph (a)(2)(ii)(O) of this section.

(*1*) *Permit criteria.* A vessel must have been issued a general category scallop permit in at least one scallop fishing year, as defined in § 648.2, between March 1, 2000, and November 1, 2004.

(*2*) *Landings criteria.* A vessel must have landed at least 1,000 lb (454 kg) of shucked scallops in any one year when the vessel also held a general category scallop permit as specified in paragraph (a)(2)(ii)(D)(*1*) of this section. NMFS dealer data will be used to make the initial determination of vessel eligibility. If a dealer reported more than 400 lb (181.44 kg) of scallops on a trip, 400 lb (181.44 kg) will be credited toward the landings criteria. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel will be used to calculate meat-weight, up to the maximum of 400 lb (181.44 kg) per trip.

(E) *Contribution factor for determining a vessel's individual fishing quota.* An eligible IFQ scallop vessel's best year of scallop landings, as specified in § 648.53(h)(2), and the vessel's number of years active, as specified in § 648.53(h)(3), shall be used to calculate a vessel's contribution factor, as specified in § 648.53(h)(1). A vessel owner that has applied for an IFQ scallop permit will be notified of the vessel's contribution factor at the time of issuance of the IFQ scallop permit. A vessel owner may appeal NMFS's determination of the IFQ scallop vessel's contribution factor by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

(F) *Eligibility for NGOM or Incidental scallop permit.* A vessel that is not eligible for, or for which the vessel's owner chooses not to apply for an IFQ scallop permit, may be issued either a NGOM scallop permit or an Incidental scallop permit if the vessel held a general category scallop permit on November 1, 2004, or if the vessel is replacing a vessel that held a general category scallop permit on November 1, 2004. A vessel owner may appeal NMFS's determination that a vessel does not meet this criteria by complying with the appeal process as specified in paragraph (a)(2)(ii)(O) of this section.

(G) *LAGC permit restrictions*—(*1*) *Change of permit category.* (*i*) *IFQ scallop permit.* A vessel issued an IFQ scallop permit may not change its general category scallop permit category at any time without voluntarily relinquishing its IFQ scallop permit eligibility as specified in paragraph (a)(2)(ii)(M) of this section. If the vessel owner has elected to relinquish the vessel's IFQ permit and instead be issued an NGOM or Incidental scallop permit, the IFQ permit shall be permanently relinquished.

(*ii*) *NGOM and Incidental scallop permit.* A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph, (a)(2)(ii)(G)(*1*)(*ii*) . The owners of a vessel issued an NOGM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(2) *VMS requirement.* A vessel issued a LAGC permit must have an operational VMS installed. Issuance of an Atlantic sea scallop permit requires the vessel owner to submit a copy of the vendor's installation receipt or provide verification of vendor activation from a NMFS-approved VMS vendor as described in § 648.9.

(H) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section. Applications for a LAGC permit described in paragraph (a)(2)(ii) of this section must be postmarked no later than [*date 90 days from the date the Final Rule is published in the FEDERAL REGISTER*]. Applications for LAGC

permits that are not postmarked on or before [*date 90 days from the date the Final Rule is published in the FEDERAL REGISTER*] may be denied and returned to the sender with a letter explaining the denial. Such denials may not be appealed and shall be the final decision of the Department of Commerce.

(I) *Qualification restriction.* (*1*) See paragraph (a)(1)(i)(C) of this section for restrictions applicable to limited access scallop permits.

(*2*) Notwithstanding paragraph (a)(1)(i)(L) of this section, scallop landings history generated by separate owners of a single vessel at different times during the qualification period for LAGC scallop permits may be used the qualify more than one vessel, provided that each owner applying for an LAGC scallop permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(*3*) Notwithstanding paragraph (a)(1)(i)(L) of this section, vessel owners applying for a LAGC permit who sold a vessel with non-scallop limited access permits, as specified in paragraph (a)(1)(i)(D) of this section, and retained only the general category scallop history as specified in paragraph (a)(1)(i)(D) of this section, before [*DATE FINAL RULE PUBLISHED IN THE FEDERAL REGISTER*], may use the general category scallop history to qualify a vessel for the initial IFQ scallop permit.

(J) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(K) *Replacement vessels.* A vessel owner may apply to replace a qualified LAGC vessel with another vessel that he/she owns. There are no size or horsepower restrictions on replacing general LAGC vessels, unless the qualified vessel that will be replaced is subject to such restriction because of other limited access permits issued pursuant to § 648.4. In order for a LAGC that also has other limited access permits issued pursuant to § 648.4 to be replaced by a vessel that does not meet the replacement and upgrade restrictions specified for those other limited access permits, the other limited access permits must be permanently relinquished, as specified in paragraph (a)(1)(i)(K) of this section.

(L) *Confirmation of Permit History.* See paragraph (a)(1)(i)(J) of this section.

(M) Abandonment or voluntary relinquishment of permits. See paragraph (a)(1)(i)(K) of this section.

(N) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(O) *Appeal of denial of permit—*(*1*)*Eligibility.* Any applicant eligible to apply for an LAGC scallop permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal.

(*2*) *Contribution factor appeals.* Any applicant eligible to apply for a IFQ scallop permit who disputes NMFS's determination of the vessel's contribution factor specified in paragraph (a)(2)(ii)(E) of this section may appeal NMFS's determination to the Regional Administrator within 30 days of the notification of the vessel's best year and years active. Any such appeal may only be based on the grounds that the information used by the Regional Administrator was incorrect. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. A vessel owner may appeal both the eligibility criteria and the contribution factor and must submit the appeal for both at the same time. An appeal of contribution factor determinations shall be reviewed concurrently with an eligibility appeal, if applicable.

(*3*) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*4*) *Status of vessels pending appeal.* A vessel denied an LAGC scallop permit may fish while under appeal, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access general category permit. The Regional Administrator shall issue such a letter that shall be effective during the pendency of any appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

* * * * *

(e) * * *

(1) * * *

(iv) An applicant applying for a limited access multispecies combination vessel or individual DAS permit, a limited access scallop permit (except an occasional scallop permit), an LAGC scallop permit, or electing to use a VMS, has failed to meet all of the VMS requirements specified in §§ 648.9 and 648.10; or

* * * * *

4. In § 648.5, paragraph (a) is revised as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing: Atlantic sea scallops, NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

5. In § 648.9, paragraphs (c)(1)(iii) and (c)(2)(i)(D) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(iii) At least twice per hour, 24 hr a day, throughout the year, for vessels issued a scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

(2) * * *

(i) * * *

(D) The vessel has been issued a general scallop permit, is not in

possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power-down code, that the VMS will be powered down, and the vessel is not required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS and submit a valid VMS activity declaration prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

6. In § 648.10, paragraphs (b)(1)(i); and (b)(2)(i) and (ii), and (c) introductory text are revised; paragraphs (b)(1)(iii) and (iv) are removed and reserved; and paragraphs (b)(4)(i) through (iv) are added as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit or an LAGC scallop permit;

* * * * *

(2) * * *

(i) A vessel subject to the VMS requirements of § 648.9 and this paragraph (b) that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying NMFS by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) Notification that the vessel is not fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS, must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

* * * * *

(4) * * *

(i) *IFQ scallop vessels.* An IFQ scallop vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the IFQ program, unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery (i.e., the vessel will not possess, retain, or land scallops) for a specific time period by notifying the Regional Administrator through the VMS. An IFQ scallop vessel that is fishing north of 42°20′ N. Lat. is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop fishery as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(ii) *NGOM scallop fishery.* An NGOM scallop vessel is deemed to be fishing under the NGOM scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of all fisheries as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(iii) *Incidental scallop fishery.* An Incidental scallop vessel that has crossed the demarcation line on any declared fishing trip for any species is deemed to be fishing under the Incidental scallop fishery unless prior to the vessel leaving port, the vessel's owner or authorized representative declares the vessel out of all fisheries as specified in paragraphs (b)(2)(i) and (ii) of this section, and the vessel does not possess, retain, or land scallops.

(iv) *Catch reports.* All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit a daily report through VMS of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access Area trip. A vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of scallops kept on each trip declared as a scallop trip or on trips that are not declared through VMS as a scallop trip, but on which scallops are caught incidentally. VMS catch reports by such vessels must be sent prior to crossing the VMS demarcation line on the way into port at the end of the trip and must include the amount of scallop meats to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the vessel trip report serial number recorded from that trip's vessel trip report.

(c) *Call-in notification.* The owner of a vessel issued a limited access monkfish or red crab permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (b) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

* * * * *

7. In § 648.14, paragraphs (a)(56), (a)(57), (a)(61), (f), (h)(1), (h)(6), (h)(9), (h)(19), (h)(27), (i), and (s) are revised, and paragraphs (a)(180) and (h)(28) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(56) Fish for, possess, or land, scallops without the vessel having been issued and carrying onboard a valid scallop permit in accordance with § 648.4(a)(2) and having declared into the scallop fishery unless the scallops were harvested by a vessel that has not been issued a Federal scallop permit and fishes for scallops exclusively in state waters;

(57) Fish for or land per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport:

(i) In excess of 40 lb (18.14 kg) shucked scallops at any time, 5 bu (1.76 hl) in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(A) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters;

(B) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A) and is properly declared into the IFQ scallop fishery;

(C) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit issued pursuant to § 648.4(a)(2)(ii)(B), and is properly declared into the NGOM scallop management area, and the NGOM TAC specified in § 648.62 has not been harvested; and/or

(D) The scallops were harvested by a vessel that has been issued and carries on board an Incidental scallop permit allowing up to 40 lb (18.14 kg) of shucked or 5 bu (1.76 hL) of in-shell scallops, is carrying an at-sea observer, and is authorized by the Regional

Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(ii) In excess of 200 lb (90.72 kg) shucked scallops at any time, 25 bu (25x hl) in-shell scallops inside the VMS Demarcation Line, or 50 bu (17.62 hL) of in-shell scallops seaward of the VMS Demarcation Line, unless:

(A) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters;

(B) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit and is properly declared into the scallop DAS or Area Access program;

(C) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii)(A), is fishing outside of the NGOM scallop management area, and is properly declared into the general category scallop fishery;

(D) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54; and/or

(E) The scallops were harvested by a vessel that has been issued and carries on board an NGOM scallop permit allowing up to 200 lb (90.72 kg) of shucked or 25 bu (25x hL) of in-shell scallops, is carrying an at-sea observer, and is authorized by the Regional Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

(iii) In excess of 400 lb (181.4 kg) shucked scallops at any time, 50 bu (17.6 hl) in-shell scallops shoreward of the VMS Demarcation Line, or 100 bu (35.24 hL) in-shell scallops seaward of the VMS Demarcation Line, unless:

(A) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(B) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit issued pursuant to § 648.4(a)(2)(i) and is properly declared into the scallop DAS or Area Access program;

(C) The scallops were harvested by a vessel that has been issued and carries on board a scallop permit and the vessel is fishing in accordance with the provisions of the state waters exemption program specified in § 648.54;

(D) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit that has also been issued an IFQ scallop permit, and is properly declared into the IFQ program; and/or

(E) The scallops were harvested by a vessel that has been issued and carries on board an IFQ scallop permit, is carrying an at-sea observer, and is authorized by the Regional Administrator to have an increased possession limit to compensate for the cost of carrying the observer.

* * * * *

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, scallops, unless the vessel has been issued a valid scallop permit pursuant to § 648.4(a)(2), or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

* * * * *

(180) Fail to comply with the requirements and restrictions for general category scallop sectors specified in § 648.63.

* * * * *

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

* * * * *

(h) * * *

(1) Fish for, possess, or land scallops after using up the vessel's annual DAS allocation and Access Area trip allocations or when not properly declared into the DAS or Area Access program pursuant to § 648.10, unless the vessel has been issued an LAGC scallop permit pursuant to § 648.4(a)(2)(ii), has properly declared into a general category scallop fishery, and does not exceed the allowed possession limit for the LAGC scallop permit issued to the vessel as specified in § 648.52, or unless exempted from DAS allocations as provided in § 648.54.

* * * * *

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits and confirmations of permit history, except as provided in § 648.4(a)(2)(i)(M).

* * * * *

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops, or participate in the scallop DAS or Area Access programs, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1), unless the vessel is fishing under the northeast multispecies or monkfish DAS program.

* * * * *

(19) Fail to comply with any requirement for participating in the State Waters Exemption Program specified in § 648.54.

* * * * *

(27) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(f), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is properly declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60.

(28) Fish for or land per trip, or possess at any time, scallops in the NGOM scallop management area after notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N. Lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use.

(i) *LAGC scallop vessels.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an LAGC scallop permit to do any of the following:

(i) Fail to comply with the LAGC scallop permit restrictions as specified in § 648.4(a)(2)(ii)(G) through (O);

(ii) Fish for, possess, or land scallops on more than one trip per calendar day;

(iii) Possess in-shell scallops while in possession of the maximum allowed amount of shucked scallops specified for each LAGC scallop permit category in § 648.62;

(iv) Fish for, possess, or land scallops on a vessel that is declared out of scallop fishing;

(v) Possess or use trawl gear that does not comply with any of the provisions or specifications in § 648.51(a), unless the vessel is fishing under the Northeast multispecies or monkfish DAS program;

(vi) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b).

(vii) Refuse, or fail, to carry an observer after being requested to carry an observer by the Regional Administrator;

(viii) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11;

(ix) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee;

(x) Fail to comply with any of the VMS requirements specified in §§ 648.10 and 648.60;

(xi) Fail to comply with any requirement for declaring in or out of the general category scallop fishery or other notification requirements specified in § 648.10(b);

(xii) Fail to comply with any of the requirements specified in § 648.60;

(xiii) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the general category scallop TAC has been harvested as specified in § 648.60;

(xiv) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the number of general category trips have been taken as specified in § 648.60;

(xv) Declare into or leave port for an area specified in § 648.59(b) through (d) after the effective date of the notification published in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c);

(xvi) Declare into or leave port for the NGOM scallop management area specified in § 648.62 after the effective date of the notification published in the **Federal Register** stating that the general category scallop TAC has been harvested as specified in § 648.62;

(xvii) Fish for, possess, or land scallops in or from the NGOM scallop management area after the effective date of the notification published in the **Federal Register** that the NGOM scallop management area TAC has been harvested, as specified in § 648.62, unless the vessel possesses or lands scallops that were harvested south of 42°20′ N. Lat., the vessel is transiting the NGOM scallop management area, and the vessel's fishing gear is properly stowed and unavailable for immediate use;

(xviii) Fail to comply with any of the requirements and restrictions for general category sectors and harvesting cooperatives specified in § 648.63; or

(xix) Fish for, land, or possess scallops at any time after 10 days from being notified that his or her appeal for an LAGC scallop permit has been denied and that the denial is the final decision of the Department of Commerce.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an IFQ scallop permit to do any of the following:

(i) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, unless the vessel is participating in the Area Access Program specified in § 648.60, is carrying an observer as specified in § 648.11, and an increase in the possession limit is authorized as specified in § 648.60(d)(2);

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hl) of in-shell scallops in the NGOM scallop management area, unless the vessel is seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.62 hL) in-shell scallops, when not declared into the NGOM scallop management area, or is transiting the NGOM scallop management area with gear properly stowed and unavailable for immediate use.

(iii) Possess more than 100 bu (35.24 hL) of in-shell scallops seaward of the VMS demarcation line, or possess, or land per trip, more than 50 bu (17.62 hL) of in-shell scallops shoreward of the VMS demarcation line, unless exempted from DAS allocations as provided in § 648.54;

(iv) Possess more than 50 bu (17.6 hL) of in-shell scallops, as specified in § 648.52(d), outside the boundaries of the Elephant Trunk Access Area specified in § 648.59(e) by a vessel that is properly declared into the Elephant Trunk Access Area under the Area Access Program as specified in § 648.60;

(v) Fish for, possess, or land scallops after the effective date of the notification in the **Federal Register** that the quarterly TAC specified in § 648.53(a)(7) has been harvested;

(vi) Fish for, possess, or land scallops in excess of a vessel's IFQ;

(vii) Have an ownership interest in vessels that collectively is more than 5 percent of the total IFQ scallop TAC specified in accordance with § 648.53(a), except as provided in § 648.4(h)(4);

(viii) Have an IFQ allocation on an IFQ scallop vessel of more than 2 percent of the total IFQ scallop TAC specified in accordance with § 648.53(a), except as provided in § 648.4(h)(4);

(ix) Apply for an IFQ transfer that will result in the transferee having an aggregate ownership interest in more than 5 percent of the total IFQ scallop TAC, except as provided in § 648.53(h)(4).

(x) Apply for an IFQ transfer that will result in the receiving vessel having an IFQ allocation in excess of 2 percent of the total IFQ scallop TAC, except as provided in§ 648.53(h)(4);

(xi) Fish for, possess, or land transferred IFQ prior to approval of the transfer by the Regional Administrator as specified in § 648.53(h)(4)(ii);

(xii) Provide false information in relation to or on an application for an IFQ transfer required under§ 648.53(h)(4);

(xiii) Sub-lease scallop IFQ;

(xiv) Transfer scallop IFQ to another IFQ scallop vessel after the transferring vessel has landed scallops;

(xv) Transfer a portion of a vessel's scallop IFQ; or

(xvi) Transfer scallop IFQ to, or receive scallop IFQ on, a vessel that has not been issued a valid IFQ scallop permit.

(3) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an NGOM scallop permit to do any of the following:

(i) Declare into or leave port for a scallop trip, or fish for or possess scallops south of 42°20′ N. Lat.;

(ii) Fish for or land per trip, or possess at any time, in excess of 200 lb (90.7 kg) of shucked or 25 bu (8.81 hl) of in-shell scallops in or from the NGOM scallop management area, except when seaward of the VMS Demarcation Line and in possession of no more than 50 bu (17.62 hL) in-shell scallops; or

(iii) Fish for, possess, or land scallops after the effective date of notification in the **Federal Register** that the NGOM scallop management area TAC has been harvested;

(4) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued an Incidental scallop permit to fish for, possess, or retain, more than 40 lb (18.14 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops, except the vessel may possess up to 10 bu (3.52 hL) of in-shell scallops while seaward of the VMS Demarcation Line.

* * * * *

(s) Any person fishing for, possessing, or landing scallops at or prior to the time when those scallops are received or

possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters.

* * * * *

8. In § 648.51, paragraphs (a)(1) and (a)(2)(i) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

(a) * * *

(1) *Maximum sweep*. The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in § 648.23, or unless the vessel is fishing under the Northeast multispecies or monkfish DAS programs.

(2) * * *

(i) *Minimum mesh size*. Subject to applicable minimum mesh size restrictions for other fisheries as specified under this part, the mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

* * * * *

9. Section 648.52 is revised to read as follows:

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop scallop fishery as specified in § 648.10(b), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 400 lb (181.44 kg) of shucked scallops, or possess more than 50 bu (17.62 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may fish for, possess, or land scallops only once in any calendar day. Such a vessels may possess up to 100 bu (35.24 hl) of in-shell scallops seaward of the VMS demarcation line on a properly declared IFQ scallop trip.

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked, or 25 bu (8.81 hL) of in-shell scallops. Such a vessel may not fish for scallops more than once in any calendar day. Such a vessel may possess up to 50 bu (17.62 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ or NGOM scallop permit that is not declared into the IFQ or NGOM scallop fishery as required under § 648.10(b)(4), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (1.76 hL) of in-shell scallops. Such a vessel may not fish for scallops more than once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS demarcation line.

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.60(a)(5).

(e) Owners or operators of vessels issued limited access permits fishing in or transiting the area south of 42 20'N. Lat. at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) A vessel that is declared into the Elephant Trunk Access Area Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Elephant Trunk Access Area described in § 648.59(e).

10. Section 648.53 is revised to read as follows:

§ 648.53 Total allowable catch, DAS allocations, and Individual Fishing Quotas.

(a) *Total allowable catch*. The annual target total allowable catch for the scallop fishery shall be established through the framework adjustment process specified in § 648.55. The annual target total allowable catch shall include the total allowable catch for all scallop vessels fishing in open areas and access areas, but shall exclude the total allowable catch established for the Northern Gulf of Maine Scallop Management Area as specified in § 648.62. After deducting the total estimated incidental catch of scallops by vessels issued incidental catch general category scallop permits, and limited access and limited access general category scallop vessels not declared into the scallop fishery, the annual target total allowable catch for open and access areas shall each be divided between limited access vessels, limited access vessels that are fishing under a limited access general category permit, and limited access general category vessels as specified in paragraphs (a)(1) through (a)(4) of this section.

(1) Access area total allowable catch. The TAC for each access area specified in § 648.59 shall be determined through the framework adjustment process described in § 648.55 and shall be specified in § 648.59 for each access area. The TAC set-asides for observer coverage and research shall be deducted from the TAC in each Access Area prior to assigning the target total allowable catch and trip allocations for limited access scallop vessels, and prior to allocating TAC to limited access general category vessels. The percentage of the TAC for each Access Area allocated to limited access vessels, limited access general category vessels, and limited access vessels fishing under limited access general category permits shall be specified in accordance with § 648.60 through the framework adjustment process specified in § 648.55.

(2) *Open area TAC for limited access vessels*. For the 2008 fishing year, the target total allowable catch for limited access vessels fishing under the scallop DAS program specified in this section shall be equal to 90 percent of the target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. Beginning March 1, 2009, unless the implementation of the IFQ program is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the target total allowable catch for limited access vessels fishing under the scallop DAS program specified in this section shall be equal to 94.5 percent of the target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. The target total allowable catch for limited access vessels fishing under the DAS program shall be used to determine the DAS allocation for full-time, part-time, and occasional scallop vessels will receive after deducting the DAS set-asides for observer coverage and research.

(3) *Open area TAC for IFQ scallop vessels*—(i) *2008 fishing year, and beyond if necessary*. IFQ scallop vessels, and limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 10 percent of the annual target total

allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section.

(ii) *2009 fishing year and beyond for IFQ scallop vessels without a limited access scallop permit.* The total allowable catch for IFQ scallop vessels without a limited access scallop permit shall be equal to 5 percent of the target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the quarterly fleetwide total allowable catch (TAC) specified in paragraph (a)(6) of this section would remain in effect until March 1, 2010, or beyond if necessary.

(iii) *2009 fishing year and beyond for IFQ scallop vessels with a limited access scallop permit.* Limited access scallop vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs shall be allocated 0.5 percent of the annual target total allowable catch specified in accordance with paragraph (a) of this section, minus the total allowable catch for all access areas specified in accordance with paragraph (b)(5) of this section. If the IFQ program implementation is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the quarterly fleetwide TAC specified in paragraph (a)(6) of this section would remain in effect until March 1, 2010, or beyond if necessary.

(4) *Northern Gulf of Maine Scallop Fishery.* The total allowable catch for the Northern Gulf of Maine Scallop Fishery shall be specified in accordance with § 648.62, through the framework adjustment process specified in § 648.55.

(5) *Delay of the IFQ program.* If the IFQ program implementation is delayed beyond March 1, 2009, as specified in paragraph (a)(5) of this section, the quarterly fleetwide TAC specified in paragraph (a)(6) of this section would remain in effect until March 1, 2010, or a subsequent date, if necessary. The Regional Administrator shall proved notice to all scallop permit holders if the IFQ program is delayed beyond March 1, 2009. If the Regional Administrator determines that the IFQ program cannot be implemented on March 1, 2009, NMFS shall inform all scallop vessel owners that the IFQ program shall not take effect on March 1, 2009, and that the quarterly TACs specified in paragraph (a)(6) of this section shall remain in effect until March 1, 2010. The Regional Administrator shall inform LAGC scallop vessel owners of a decision to delay the IFQ program no later than January 1, 2009, 2010, or subsequent year, if necessary.

(6) *Distribution of transition period total allowable catch*—(i) *Allocation.* For the 2008 fishing year, and subsequent fishing years until IFQs are implemented as specified in paragraph (j) of this section, the total allowable catch for IFQ scallop vessels shall be allocated as specified in paragraphs (a)(1) through (4) of this section into quarterly periods. The percentage allocation for each period allocated to the IFQ scallop vessels, including limited access vessels fishing under an IFQ scallop permit and vessels under appeal for a IFQ scallop permit pursuant to § 648.4(a)(2)(ii) shall be specified in the framework adjustment process as specified in § 648.55 and are specified in the following table:

Quarter	Percent	TAC
I. March-May	To Be Determined	To Be Determined
II. June-August	To Be Determined	To Be Determined
III. September-November	To Be Determined	To Be Determined
IV. December-February	To Be Determined	To Be Determined

(ii) *Deductions of landings.* All landings by IFQ scallop vessels and limited access vessels fishing under an IFQ scallop permit shall be deducted from the TAC allocations specified in the table in paragraph (a)(6)(i) of this section.

(b) *DAS allocations.* (1) Total DAS to be used in all areas other than those specified in § 648.59, shall be specified through the framework adjustment process as specified in § 648.55, using the target total allowable catch for open areas specified in paragraph (a) of this section, and estimated catch per unit effort.

(2) Prior to setting the DAS allocations specified in paragraph (b)(4) of this section, 1 percent of total available DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(1) of this section. Two percent of total available DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(2) of this section.

(3) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has properly declared out of the scallop DAS fishery, pursuant to the provisions of § 648.10, including vessels that have used up their maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made appropriate VMS declaration as specified in § 648.10(b)(4), possesses, fishes for, or retains the amount of scallops allowed by its general category permit, does not possess, fish for, or retain any scallops if the vessel does not have a general category scallop permit, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2007	2008
Full-time	51	To Be Determined
Part-time	20	To Be Determined
Occasional	4	To Be Determined

(5) *Additional open area DAS.* If a TAC for yellowtail flounder specified in § 648.85(c) is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area shall be allocated additional open area DAS according to the calculations specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) For each remaining complete trip in Closed Area I, a vessel may fish an additional 5.5 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Closed Area I would be allocated 11 additional open area DAS (2 5.5 = 11 DAS) if the TAC for yellowtail flounder allocated to the scallop fishery for Closed Area I is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area I allocated to the scallop fishery is

harvested shall be allocated 0.458 additional DAS for each unused DAS in Closed Area I. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000–lb (4,536–kg) compensation trip remaining in Closed Area I would be allocated 3.05 additional open area DAS in that same fishing year (0.458 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(ii) For each remaining complete trip in Closed Area II, a vessel may fish an additional 5.4 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Closed Area II would be allocated 10.8 additional open area DAS (2 5.4 = 10.8 DAS) if the TAC for yellowtail flounder allocated to the scallop fishery in Closed Area II is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area II allocated to the scallop fishery is harvested shall be allocated 0.450 additional DAS for each unused DAS in Closed Area II. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg) (the catch rate per DAS). For example, a vessel with a 10,000–lb (4,536–kg) compensation trip remaining in Closed Area II would be allocated 3 additional open area DAS in that same fishing year (0.450 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(iii) For each remaining complete trip in the Nantucket Lightship Access Area, a vessel may fish an additional 4.9 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Nantucket Lightship Access Area would be allocated 9.8 additional open area DAS (2 4.9 = 9.8 DAS) if the TAC for yellowtail flounder allocated to the scallop fishery in the Nantucket Lightship Access Area is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Nantucket Lightship Access Area allocated to the scallop fishery is harvested shall be allocated 0.408 additional DAS for each unused DAS in the Nantucket Lightship Access Area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg) (the catch rate per DAS). For example, a vessel with a 10,000–lb (4,536–kg) compensation trip remaining in Nantucket Lightship Access Area would be allocated 2.7 additional open area DAS in that same fishing year (0.408 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(6) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2006 fishing year refers to the period March 1, 2006, through February 28, 2007.

(c) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS, the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g)(1) of this section, shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(g) *DAS set-asides*—(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2007 fishing year is 165 DAS. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2007 fishing year is 330 DAS. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

(h) *Annual Individual fishing quotas*—(1) *IFQ restriction.* For each fishing year of the IFQ program, a vessel issued an IFQ scallop permit may only harvest and land the total amount of scallop meats allocated in accordance with this subpart. Unless otherwise specified in this part, A vessel allocated scallop IFQ may not exceed the possession limits specified in § 648.52 on any trip.

(2) *Calculation of IFQ*. The total allowable catch allocated to IFQ scallop vessels, and the total allowable catch allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(3)(ii) and (iii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota*. The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraphs (h)(2)(ii) of this section, multiplied by the TAC allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as specified in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) *Contribution factor*. An IFQ scallop vessel's contribution factor is calculated using the best year, years active, and index factor as specified in paragraphs (h)(1)(ii)(A) through (C) of this section. A vessel's contribution factor shall be provided to the owner of a qualified limited access general category vessel following initial application for an IFQ scallop permit as specified in § 648.4(a)(2)(ii)(E).

(A) *Best year determination*. An eligible IFQ scallop vessel's highest scallop landings in any scallop fishing year that the vessel was issued a general category scallop permit between March 1, 2000, and November 1, 2004, shall be determined using NMFS dealer reports. If a dealer reported more than 400 lb (181.44 kg) of scallops landed on a trip, only 400 lb (181.44 kg) will be credited for that trip toward the best year calculation. For dealer reports that indicate clearly that the landings were bushels of in-shell scallops, a conversion of 8.33 lb (3.78 kg) of scallop meats per bushel shall be used to calculate meat-weight, up to a maximum of 400 lb (181.44 kg) per trip.

(B) *Years active*. For each eligible IFQ scallop vessel, the total number of scallop fishing years during the period March 1, 2000, through November 1, 2004, in which the vessel had a general category scallop permit and landed at least 1 lb (0.45 kg) of scallop meats, or in-shell scallops, shall be counted as active years based on NMFS dealer reports.

(C) *Index to determine contribution factor*. For each eligible IFQ scallop vessel, the best year as determined pursuant to paragraph (a)(2)(ii)(E)(1) of this section shall be multiplied by the appropriate index factor specified in the following table, based on years active as specified in paragraph (a)(2)(ii)(E)(2) of this section. The resulting contribution factor shall determine its IFQ for each fishing year based on the allocation to general category scallop vessels as specified in § 648.53(a)(2) and the method of calculating the IFQ provided in § 648.53(j).

Years Active	Index Factor
1	0.75.
2	0.875.
3	1.0.
4	1.125.
5	1.25.

(D) *Contribution factor example*. If a vessel landed 48,550 lb (22,022 kg) of scallops in its best year, and was active in the general category scallop fishery for 5 years, the vessel's contribution factor is equal to 60,687 lb (27,527 kg) (48,550 lb (22,022 kg * 1.25).

(iii) *Contribution percentage*. A vessel's contribution percentage will be determined by dividing its contribution factor by the sum of the contribution factors of all vessels issued an IFQ scallop permit. The sum of the contribution factors shall be determined when all IFQ scallop vessels are identified. Continuing the example in paragraph (h)(1)(ii)(D) of this section, the sum of the contribution factors for 380 IFQ scallop vessels is estimated for the purpose of this example to be 4.18 million lb (1,896 mt). The contribution percentage of the above vessel is 1.45 percent (60,687 lb (27,527 kg) /4.18 million lb (1,896 mt) = 1.45 percent).

(iv) *Vessel IFQ Example*. Continuing the example in paragraphs (h)(1)(ii)(D) and (h)(1)(iii) of this section, with a TAC allocated to IFQ scallop vessels estimated for this example to be equal to 2.5 million lb (1,134 mt), the vessel's IFQ would be 36,250 lb (16,443 kg) (1.45 percent * 2.5 million lb (1,134 mt).

(3) *IFQ ownership restrictions*—(i) *IFQ scallop vessel IFQ cap*. A vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2 percent of the TAC allocated to the IFQ scallop vessels as described in paragraphs (a)(3)(ii) and (iii) of this section.

(ii) *IFQ ownership cap*. An owner of more than one IFQ scallop vessel may not have an aggregate ownership interest in more than 5 percent of the TAC allocated to all IFQ scallop vessels and may not be issued an IFQ scallop permit for a vessel that would result in the individual owning more than 5 percent of the TAC allocated to IFQ scallop vessels. A confirmation of permit history shall be counted toward an individual's ownership. Vessel owners that were initially issued an IFQ scallop permit or were issued or renewed an IFQ scallop permit for a vessel in any fishing year following the 2008 fishing year, in compliance with this 5 percent ownership restriction, is eligible to renew the IFQ scallop permit for his or her vessel regardless of whether the renewal of the permit(s) will result in the 5–percent IFQ ownership cap being exceeded.

(iii) *Limited access scallop vessels that have been issued an IFQ scallop permit*. The IFQ scallop vessel IFQ cap and IFQ ownership cap specified in this paragraph (h)(3) do not apply to limited access scallop vessels that are also issued a limited access general category scallop permit because such vessels are already subject to an ownership limitation, as specified in § 648.4(a)(2)(i)(M).

(4) *IFQ cost recovery*. The owner of a vessel issued an IFQ scallop permit and subject to the IFQ program specified in paragraph (h) of this section must pay a portion of the proceeds from scallop fishing to NMFS to help NMFS recover up to 3 percent of the cost of administering and enforcing the IFQ program. The specific cost recovery provisions shall be specified in the first framework implementing the specifications for the IFQ program, including the overall total allowable catch and eligible vessels' IFQs. Payment of cost recovery funds shall be through electronic means unless otherwise notified by the Regional Administrator.

(5) *Transferring IFQ*—(i) *Temporary IFQ transfers*. Unless otherwise restricted in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel may temporarily transfer one or more entire IFQ from another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) *Permanent IFQ transfers*. Unless otherwise restricted in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel may transfer one or more entire IFQ indefinitely from another IFQ scallop vessel. The Regional Administrator has final approval authority for all IFQ transfer requests.

(iii) *IFQ transfer restrictions*. The owner of an IFQ scallop vessel may transfer entire IFQ allocations only. The owner of an IFQ scallop vessel that has fished under its IFQ may not transfer

that vessel's IFQ to another IFQ scallop vessel. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the total allowable catch allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel. A vessel permanently transferring its IFQ to another vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits.

(iv) *Application for an IFQ transfer*. The owner of vessels applying for a transfer IFQ must submit a completed application form obtained from the Regional Administrator. The application must be signed by both parties (transferor and transferee) involved in the transfer of the IFQ, and must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicants desire to have the IFQ effective on the receiving vessel. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the scallop fishing year, provided the vessel transferring the IFQ to another vessel has not utilized any of its own IFQ. Applications for temporary transfers received 45 days prior to the end of the fishing year may not be processed in time for a vessel to utilize the transferred IFQ prior to the expiration of the fishing year for which the IFQ transfer, if approved, would be effective.

(A) *Application information requirements*. An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(B) *Approval of IFQ transfer applications*. Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 45 days of receipt of an application.

(C) *Denial of lease or transfer application*. The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to an enforcement proceeding; the transferor's or transferee's vessel is prohibited from fishing; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the total allowable catch allocated to IFQ scallop vessels; the transfer will result in the transferee having ownership of general category scallop allocation that exceeds 5 percent of the total allowable catch allocated to IFQ scallop vessels; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

11. In § 648.54, paragraphs (b), (c)(3) and (f) are revised to read as follows:

§ 648.54 State waters exemption.

* * * * *

(b) LAGC scallop vessel gear and possession limit restrictions. Any vessel issued an LAGC scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1), and (e)(2), and the applicable possession limits specified in § 648.52, while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

* * * * *

(c) * * *

(3) Prior to Amendment 11 to the FMP, which became effective [*date 30 days from publication of the Final Rule in the Federal Register*], Maine, New Hampshire, and Massachusetts were determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. States must resubmit information describing their scallop fishery conservation programs so that the Regional Administrator can determine if such states continue to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. In addition, these states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to provide the exemption for such states.

* * * * *

(f) *Duration of exemption*. An exemption expires upon a change in the vessel's name or ownership, or upon notification through VMS by the participating vessel's owner.

* * * * *

12. In § 648.55, paragraphs (a) and (e) are revised to read as follows:

§ 648.55 Framework adjustments to management measures.

(a) Biennially, or upon a request from the Council, the Regional Administrator shall provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve the stock-rebuilding objectives. Based on this information, the PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council shall initiate a framework adjustment to establish or revise total allowable catch, DAS

allocations, rotational area management programs, percentage allocations for limited access general category vessels in Sea Scallop Access Areas, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational Closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

* * * * *

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent over fishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

(1) Total allowable catch and DAS changes;

(2) Shell height;

(3) Offloading window reinstatement;

(4) Effort monitoring;

(5) Data reporting;

(6) Trip limits;

(7) Gear restrictions;

(8) Permitting restrictions;

(9) Crew limits;

(10) Small mesh line;

(11) Onboard observers;

(12) Modifications to the overfishing definition;

(13) VMS Demarcation Line for DAS monitoring;

(14) DAS allocations by gear type;

(15) Temporary leasing of scallop DAS requiring full public hearings;

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch;

(17) Aquaculture enhancement measures and closures;

(18) Closed areas to increase the size of scallops caught;

(19) Modifications to the opening dates of closed areas;

(20) Size and configuration of rotation management areas;

(21) Controlled access seasons to minimize bycatch and maximize yield;

(22) Area-specific trip allocations;

(23) TAC specifications and seasons following re-opening;

(24) Limits on number of area closures;

(25) TAC or DAS set-asides for funding research;

(26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside;

(27) Finfish TACs for controlled access areas;

(28) Finfish possession limits;

(29) Sea sampling frequency;

(30) Area-specific gear limits and specifications;

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;

(32) Specifications for IFQs for limited access general category vessels;

(33) Revisions to the cost recovery program for IFQs;

(34) Development of general category fishing industry sectors and fishing cooperatives;

(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;

(36) VMS requirements; and

(37) Any other management measures currently included in the FMP.

* * * * *

13. Section 648.57 is revised to read as follows:

§ 648.57 Sea scallop area rotation program.

An area rotation program is established for the scallop fishery, which may include areas closed to scallop fishing defined in § 648.58, and/or Sea Scallop Access Areas defined in § 648.59, subject to the Sea Scallop Area Access program requirements specified in § 648.60. Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other FMPs, are open to scallop fishing as governed by the other management measures and restrictions in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in § 648.55(a). The percentage of the total allowable catch for each Sea Scallop Access Area that is allocated to limited access scallop vessels and limited access general category scallop vessels shall be specified in § 648.59 through the framework adjustment process specified in § 648.55.

14. In § 648.59, paragraphs (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(6)(ii) are revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(b) * * *

(5) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Closed Area I total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii) through the framework adjustment process. The resulting total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii) and shall determine the number of trips specified in paragraph (b)(5)(ii)(B) of this section.

(B) Except as provided in paragraph (b)(5)(ii)(C) of this section, subject to the possession limit specified in §§ 648.52(a) and (b), and 648.60(g), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), the date on which 216 trips are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2007 fishing year.

(C) A vessel issued a NE Multispecies permit and a LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(c) * * *

(5) * * *

(ii) *LAGC scallop vessels*—(A) The percentage of the Closed Area II total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii) through the framework adjustment process. The resulting total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (c)(5)(ii) and shall determine the number of trips specified in paragraph (c)(5)(ii)(B) of this section.

(B) Except as provided in paragraph (c)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date on which the total number of trips is projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(d) * * *

(5) * * *

(ii) *LAGC scallop vessels*. (A) The percentage of the Nantucket Lightship Access Area total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii) through the framework adjustment process. The resulting total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (d)(5)(ii) and shall determine the number of trips specified in paragraph (d)(5)(ii)(B) of this section.

(B) Except as provided in paragraph (d)(5)(ii)(C) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), of the date on which 394 trips are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2007 fishing year.

(C) A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from fishing for, possessing, or landing scallops.

(e) * * *

(6) * * *

(ii) *LAGC scallop vessels*. (A) The percentage of the Elephant Trunk Access Area total allowable catch allocated to LAGC scallop vessels shall be specified in this paragraph (e)(6)(ii) through the framework adjustment process. The resulting total allowable catch allocated to limited access general category vessels shall be specified in this paragraph (e)(6)(ii) and shall determine the number of trips specified in paragraph (e)(6)(ii)(B) of this section.

(B) Subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), an LAGC scallop vessel may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with ' 648.60(g)(4), of the date on which 865 trips allocated March 1, 2007, are projected to be taken, in total, by all LAGC scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken.

* * * * *

15. In § 648.60, paragraph (a) introductory text, paragraphs (g)(1) and (2), and paragraph (g)(3) introductory text are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) A limited access scallop vessel may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b) through (f) of this section. An LAGC scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraph (g) of this section.

* * * * *

(g) * * *

(1) An LAGC scallop vessel, except a vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the LAGC Access Area fishery, may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued a NE Multispecies permit and an LAGC scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the Sea Scallop Area Access program as specified in paragraph (a)(2) of this section is not subject to the restrictions and requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and this paragraph (g), and may not fish for, possess, or land scallops on such trips.

(2) *Gear restrictions.* An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (d) must fish with dredge gear only. The combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the Access Areas described in § 648.59(b) through (d) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *Scallop TAC.* An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the scallop TAC specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) in the Access Area has been or is projected to be harvested. Upon a determination from the Regional Administrator that the scallop TAC for a specified Access Area, as specified in this paragraph (g)(3), has been, or is projected to be harvested, the Regional Administrator shall publish notification of this determination in the

Federal Register, in accordance with the Administrative Procedure Act.

* * * * *

16. Section 648.62 is added to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

(a) The NGOM scallop management area is the area north of42° 20 N. Lat. To fish for or possess scallops in the NGOM scallop management area, a vessel must be issued a scallop permit as specified in § 648.4(a)(2).

(1) If a vessel has been issued a NGOM scallop permit, the vessel is restricted to fishing for or possessing scallops only in the NGOM scallop management area.

(2) Scallop landings by all vessels issued LAGC scallop permits, including IFQ scallop permits, and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in paragraph (b) of this section. Scallop landings by an IFQ scallop vessels and fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQ. Landings by limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

(3) A vessel issued a NGOM or IFQ scallop permit that fishes in the NGOM may fish for, possess, or retain up to 200 lb (90.72 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.62 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The total allowable catch and allocations as specified in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the total allowable catch and allocations specified in § 648.53(a).

(1) *NGOM total allowable catch.* To be determined.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the area north of 42° 20 N. Lat. with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the **Federal Register** that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not subject to the closure of the NGOM scallop management area.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intend to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands, scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a trip under the scallop DAS program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

17. Section 648.63 is added to read as follows:

§ 648.63 General category sectors and harvesting cooperatives.

(a) *Procedure for implementing Sector allocation proposals.* (1) Any person may submit a Sector allocation proposal for a group of LAGC scallop vessels to the Council, at least 1 year in advance of the start of the proposed sector, and request that the Sector be implemented through a framework procedure specified at § 648.55, in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council shall follow the framework adjustment provisions of § 648.55. Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the LAGC scallop vessel regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1), and (c) of this section, and comply with the conditions and restrictions of this paragraph (b).

(1) *Participation.* (i) Only LAGC scallop vessels are eligible to form Sectors and Sectors may choose which eligible permit holders to include or exclude in the sector, consistent with all applicable law. A Sector may establish additional criteria for determining its membership, provided such criteria are specified in the operations plan and are consistent with all applicable law. Any interested group that meets the eligibility criteria may submit a proposal for a sector. To initiate the process of sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that sector's allocation of total allowable catch. Vessels that do not choose to participate in a sector will fish under the IFQ program and remain in the non-sector scallop fishery.

(ii) Participation by incidental catch or NGOM scallop vessels in the Sector is subject to approval by the New England Fishery Management Council as part of the action that implements the Sector allocation, provided the details of such participation are specified in the Sector's operations plan. A Sector allocation may be harvested by non-Sector members, provided the Sector operations plan specifies that the Sector may authorize non-Sector vessels to harvest the Sector allocation. In this case, if the Sector is approved, the landings history of the participating non-Sector vessels may not be used in the calculation of future Sector shares and may not be used as scallop catch history for such vessels. The operations plan must specify how such participating non-Sector shall be subject to the rules of the Sector.

(iii) Once a vessel operator and/or vessel owner signs a binding contract to have his/her vessel participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(iv) Vessels that fish in the LAGC scallop fishery outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for IFQ used, or catch by the vessel, prior to implementation of the Sector.

(v) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(iii) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(vi) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the scallop regulations for non-Sector vessels specified under this part either for any period specified in the final decision of penalty or sanction.

(vii) If a pre-existing Sector accepts a new member, the percentage share brought to the Sector is based on that vessel's average qualification landings at the time it joins the Sector (i.e., the vessel is treated as a 'Sector of one' and a share based on the appropriate adjusted TACs is calculated). This new single-vessel-Sector share is added to the existing Sector. If a vessel leaves a Sector, that Sector's share is reduced by the individual vessel share the exiting vessel had when it joined the Sector.

(viii) A vessel may not be a member of more than one Sector. Once a vessel enters into a Sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one Sector to another during a single fishing year. Therefore, if a vessel leaves a Sector for any reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year

(2) *Allocation of TAC to Sectors.* (i) The Sector allocation shall be equal to a percentage share of the TAC allocation for IFQ scallop vessels specified in § 648.53(a), similar to a IFQ scallop vessel's IFQ as specified in § 648.53(h). The Sector's percentage share of the IFQ scallop fishery TAC catch shall not change, but the amount of allocation based on the percentage share will change based on the TAC specified in § 648.53(a).

(ii) *Sector share determination.* When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(3) for each vessel listed as a Sector member. The Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A Sector shall not be allocated more than 20 percent of the TAC for IFQ vessels specified in § 648.53(a).

(3) Once a Sector's allocation is projected to be harvested, Sector operations will be terminated for the remainder of the fishing year.

(4) If a Sector's allocation is exceeded in a given fishing year, the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanction pursuant to 15 CFR part 904. If a Sector exceeds its allocation in more than one fishing year, the Sector's authorization to operate may be withdrawn.

(5) A vessel operator and/or vessel owner participating in a Sector is not subject to the limit on the vessel's catch based on the vessel's own IFQ or contribution percentage as defined in § 648.53(h), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to participate in the Sector. The Sector shall determine how the Sector's allocation will be divided between its participating vessels, regardless of whether the catch by a participating vessel exceeds that vessel's own IFQ.

(6) Each vessel operator and/or vessel owner fishing under an approved Sector must comply with all scallop management measures of this part and other applicable law, except the vessel's own IFQ as specified in paragraph (b)(11) of this section. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operations Plan specified in paragraph (c) of this section and the Letter of Authorization issued pursuant to paragraph (b)(11) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(7) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(8) It shall be the responsibility of each Sector to track its activity and internally enforce any provisions adopted through procedures established in the operations plan and agreed to through the Sector contract. Sector contracts should describe graduated sanctions including grounds for expulsion of Sector member vessels. A Sector is a legal entity, and participating Sector vessels shall be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors and other regulations under 50 CFR part 648. Vessels operating within a Sector are responsible for judgments against the Sector. Sector operations plans shall specify how a Sector will monitor its landings to assure that Sector landings do not exceed the Sector allocation. At the end of the fishing year, NMFS will evaluate landings using VMS, and any other available information to determine whether a Sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a Sector exceeds its TAC, the Sector may be subject to enforcement action and may have its authorization as a Sector be withdrawn by the Regional Administrator, after consultation with the New England Fishery Management Council.

(9) Permanent or temporary transfers of allocation between Sectors or between Sector and non-Sector participants is prohibited. For purposes of harvesting a Sector allocation only, vessels under contract to a Sector are assumed to be part of that Sector for the duration of that contract.

(10) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(11) If a Sector is approved as specified in paragraph (d)(3) of this section, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner for the participating Sector vessel. The Letter of Authorization shall authorize participation in the Sector operations and shall exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ. The Letter of authorization may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the Sector's operations plan and the Sector's allocation.

(c) *Operations plans.* (1) A group that wants to form a Sector and receive an allocation must submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the Sector and, if approved, shall constitute a contract.

(2) The operations plan among all of the Sector members must have, at a minimum, the following components:

(A) A list of all participants;

(B) A contract signed by all participants indicating their agreement to abide by the operations plan;

(C) An entity name, address, phone number, and the name and contact information for a Sector representative (a manager or director) that NMFS can contact regarding Sector management issues;

(D) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;

(E) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);

(F) A plan detailing how the Sector will avoid exceeding its allocated TACs, including provisions for monitoring and enforcement of the Sector regulations, and documenting all landings and discards;

(G) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;

(H) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

(I) The process through which the operations plan can be amended by Sector members;

(J) If the Sector plans to authorize non-Sector vessels to harvest scallops allocated to the Sector, details of such arrangements must be described in the operations plan;

(K) Any documents and analyses necessary to comply with the National Environmental Protection Act must be submitted to NMFS. The development of the analytical document is the responsibility of the applicants.

(d) *Sector review, approval, and revocation*. (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the New England Fishery Management Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The New England Fishery Management Council shall consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After New England Fishery Management Council approval of a Sector, the details of its operation shall be addressed between the Sector and NMFS, although the New England Fishery Management Council may review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Director no later than December 1 of each year, whether or not the plan has changed. NMFS may consult with the Council and will solicit public comment on the operations plan for at least 15 days, through proposed rulemaking in the **Federal Register**. Upon review of the public comments, the Regional Administrator may approve or disapprove Sector operations, through a final determination pursuant to the Administrative Procedure Act.

[FR Doc. E7–24254 Filed 12–14–07; 8:45 am]

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Notices

Federal Register

Vol. 72, No. 241

Monday, December 17, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 11, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Grain Inspection, Packers & Stockyards Administration

Title: Report and Recordkeeping Requirements.

OMB Control Number: 0580–0013.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is mandated to provide, upon request, inspection, certification, and identification services related to assessing the class, quality, quantity, and condition of agricultural products shipped or received in interstate and foreign commerce. Applicants requesting GIPSA services must specify the kind and level of service desired, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Need and Use of the Information: GIPSA employees use the information to guide them in the performance of their duties. Additionally, producers, elevator operators, and/or merchandisers who obtain official inspection, testing, and weighing services are required to keep records related to the grain or commodity for three years. Personnel who provide official inspection, testing, and weighing services are required to maintain records related to the lot of grain or related commodity for a period of five years. The information is used for the purpose of investigating suspected violations.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 8,754.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Weekly, Monthly, Semi-annually, Annually.

Total Burden Hours: 164,393.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–24356 Filed 12–14–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Conservation Innovation Grants Fiscal Year 2008 Announcement of Program Funding; Catalog of Federal Domestic Assistance (CFDA) Number: 10.912

AGENCY: Natural Resources Conservation Service (NRCS), Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: NRCS requests applications for Conservation Innovation Grants (CIG) to stimulate the development and adoption of innovative conservation approaches and technologies. Applications are accepted from all 50 States, the Caribbean Area (Puerto Rico and the Virgin Islands), and the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). NRCS anticipates that the amount available for support of this program in FY 2008 will be approximately $20 million. Funds will be awarded through a nationwide competitive grants process. There are three CIG categories available in FY 2008: Natural Resource Concerns Category, Technology Category, and the Chesapeake Bay Watershed Category. Applications are requested from eligible government or non-government organizations or individuals for competitive consideration of grant awards for projects between one and three years in duration. This notice identifies the objectives for CIG projects, the eligibility criteria for projects and associated instructions needed to apply to CIG.

DATES: Applications must be received in the NRCS National Headquarters by 5 p.m., Eastern Standard Time (EST), on Wednesday, February 20, 2008.

ADDRESSES: The address for hand-delivered applications or applications submitted using express mail or overnight courier service is: USDA Natural Resources Conservation Service; Conservation Innovation Grants Program; Financial Assistance Programs Division, Room 5239-S; 1400 Independence Ave, SW.; Washington, DC 20250. Contact phone numbers for hand-delivered applications are (202) 720–1845, (202) 720–2335, or (202) 205–1165.

Applications sent via the U.S. Postal Service must be sent to the following address: USDA Natural Resources Conservation Service; Conservation Innovation Grants Program; Financial Assistance Programs Division; Room 5239-S, Post Office Box 2890, Washington, DC 20013–2890.

To submit your application electronically, visit *www.grants.gov/apply* and follow the instructions.

FOR FURTHER INFORMATION CONTACT:

Tessa Chadwick, CIG National Program Manager, USDA NRCS, PO Box 2890, Room 5239–S, Washington, DC 20013–2890.
Phone: (202) 720–2335
Fax: (202) 720–4265
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Shani Harmon, CIG Program Assistant, USDA NRCS, PO Box 2890, Room 5239–S, Washington, DC 20013–2890.
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I. Funding Opportunity Description

A. Legislative Authority

CIG was authorized as part of the Environmental Quality Incentives Program (EQIP) [16 U.S.C. 3839aa-8] under Section 1240H of the Food Security Act of 1985, as added by Section 2301 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The Secretary of Agriculture delegated the authority for the administration of EQIP and CIG to the Chief of the Natural Resources Conservation Service (NRCS), who is a Vice President of the Commodity Credit Corporation (CCC). EQIP is administered by NRCS under the authorities of the CCC.

B. Overview

The purpose of CIG is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging the Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals, guides, and references, or to the private sector. CIG does not fund research projects. Instead, it is a vehicle to stimulate the development and adoption of conservation approaches or technologies that have been studied sufficiently to indicate a likelihood of success and to be candidates for eventual technology transfer or institutionalization. CIG funds projects targeting innovative on-the-ground conservation, including pilot projects and field demonstrations.

NRCS will accept applications for single or multi-year projects, not to exceed three years, submitted to NRCS from eligible entities, including federally-recognized Indian Tribes, State and local governments, and non-governmental organizations and individuals. Applications are accepted from all 50 States, the Caribbean Area (Puerto Rico and the Virgin Islands), and the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Complete applications will be evaluated by a technical peer review panel and scored based on the Criteria for Application Evaluation identified in this document. There are eight review groups for FY 2008 applications: Water Quality-Livestock; Water Quality-Not Livestock; Water Quantity; Soils; Atmospheric; Grazing Land and Forest Health; Wildlife; and Energy. Applicants will indicate which of these review groups should review the application. Scored applications will be forwarded to a Grants Review Board. The Grants Review Board will make recommendations for project approval to the Chief. Final award selections will be made by the Chief of NRCS.

C. Innovative Conservation Projects or Activities

For the purposes of CIG, the proposed innovative project or activity must encompass the development and field testing, evaluation, and implementation of:

- Conservation adoption incentive systems, including market-based systems; or,
- Promising conservation technologies, practices, systems, procedures, or approaches.

To be given priority consideration, the innovative project or activity:

- Will have been studied sufficiently to indicate a good probability for success;
- Demonstrates, tests, evaluates, and verifies environmental (soil, water, air, plants, and animal) effectiveness, utility, affordability, and usability in the field;
- Adapts conservation technologies, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption;
- Introduces conservation systems, approaches, and procedures from another geographic area or agricultural sector; and
- Adapts conservation technology, management, or incentive systems to improve performance.

D. CIG Categories

For Fiscal Year 2008, three categories of CIG will be offered. Applicants will need to identify which of the 3 categories applies to their proposed project.

1. National Natural Resource Concerns Category

Applications must demonstrate the use of innovative technologies or approaches, or both, to address a natural resource concern or concerns. The five natural resource concerns for possible funding through Conservation Innovation Grants for fiscal year 2008 are: Water Resources; Soil Resources; Atmospheric Resources; Grazing Land and Forest Health; and Wildlife Habitat. This Category also includes applications that focus on Market Based Approaches to address any or all of these five resource concern areas.

A. Water Resources

The objective of this natural resource concern is to implement new technologies and/or approaches to maintain, restore, or enhance water quality and/or quantity in watersheds with predominantly agricultural land uses while sustaining productivity. Subtopics include:

- Nutrient, pesticide, and/or pathogen transport to surface water and groundwater;
- Sediment transport to surface water;
- Aquifer recharge/maintenance of groundwater supplies;
- Increased water supplies/availability through alternative treatment; enhanced automation, monitoring or scheduling; reduced system losses; or reuse strategies; and
- Technologies scalable to small farms to maintain, restore, or enhance water quality and/or quantity.

B. Soil Resources

The objective of this conservation concern is to implement new technologies and/or approaches to maintain, restore, or enhance soil resources associated with agricultural and forest land uses while sustaining productivity. Subtopics include:

- Erosion reduction;
- Accumulation of harmful levels of constituents in soils, including nutrients, metals, or salts; and
- Improvement to soil quality and productivity.

C. Atmospheric Resources

The objective of this conservation concern is to implement new technologies and/or approaches to maintain, restore, or enhance air quality and atmospheric resources through agricultural and forestry practices while sustaining productivity. Subtopics include:

- Agricultural emissions of particulates, odors, volatile organic compounds, and greenhouse gases;
- Carbon sequestration in soil and through other mechanisms;
- Bio-based energy opportunities; and
- Identification and quantification of management practices for air quality and atmospheric change concerns at animal operations.

D. Grazing Land and Forest Health

The objective of this conservation concern is to implement new technologies and/or approaches to maintain, restore, or enhance grazing land and forest health while sustaining productivity. Subtopics include:

- Invasive species management on grazing and forest land;
- Effects of pests, diseases, and fragmentation on forest and grazing land quality/health;
- Systems or practices to minimize overgrazing and restore lands suffering effects of overgrazing;
- Low-input approaches to increasing forage production;
- Alternative grasses or forages for livestock; and
- Systems or practices that integrate trees-forage-livestock (i.e., silvopasture).

E. Wildlife Habitat

The objective of this conservation concern is to implement new technologies and/or approaches for environmentally sound wildlife habitat management while sustaining agricultural productivity. Possible subtopics include:

- Riparian area management and restoration;
- Invasive species management;
- Pollinator protection
- Biodiversity; and,
- Wetland function and health.

F. Market-Based Approaches

The objective of this approach is to develop, implement, and or evaluate processes, technology tools, institutional arrangements, or systems that are 'market-based' in nature and address one of the above priority resource concerns. Possible subtopics include:

- Development and application of technology tools that measure environmental services (i.e. benefits) in order to document credits for trading;
- Greenhouse gas accounting tools and registries;
- Water quality improvement accounting tools;
- Nutrient trading and/or accounting tools;
- Demonstration of ecosystem-based services that facilitate conservation implementation; and
- Processes and institutional arrangements that develop, demonstrate, evaluate, and clarify successful approaches to market-based conservation involving private working lands.

2. Chesapeake Bay Watershed Category

Applications for the Chesapeake Bay Watershed Category are being accepted and reviewed by the National Fish and Wildlife Foundation. Information for submitting an application for this category of CIG funding can be accessed at the following link *http://www.nfwf.org*.

3. National Technology Category

Applications must address one or more of the following specific technology needs areas identified by NRCS:

A. Improved On-Farm Energy Efficiency—Possible Subtopics Include

- Renewable energy sources such as wind or solar;
- Methane recovery;
- Other innovative farm management or production technologies;
- Automated self energy audit technology;
- Energy audit worksheets; and
- Compilation of on-farm energy audits and audit processes.

B. Water Management (Both Drainage Water and Irrigation Water) Drainage Water Management—Possible Subtopics Include

- Implementation of drainage water management systems in small watersheds and application of tools to assess multiple effects (e.g., economic, wildlife habitat, soil quality, air quality, wetlands and water quality) at watershed scale;
- Achieving downstream nutrient reduction benefits through management of surface or sub-surface drainage systems;
- Improving water/nutrient accounting/budgeting;
- Improving design and management of drainage water management systems to improve benefits to producers and to the environment;
- Improving the ability of buffers to reduce nutrient loadings in tile drained landscapes; and
- Improving wetland creation, restoration, and enhancement to reduce nutrient loadings.

Irrigation Water Management—Possible Subtopics Include

- New engineering software or modeling systems that would automate, demonstrate, and facilitate technically sound conservation decisions by the public pertaining to resource

assessment, conservation planning, and conservation system installation and evaluation;

- Irrigation management for water conservation;
- Achieving multiple benefits (e.g., economic, enhanced crop production, recreation, wildlife habitat, soil quality, wetlands and water quality) through area-wide or regional irrigation water management, scheduled application, and supply or application of new or innovative technology; and
- Achieving nutrient or pollutant reduction benefits in downstream receiving waters through area-wide or regional irrigation water management, scheduled application, and supply or application of new or innovative technology.

II. Funding Availability

A. National Component

NRCS anticipates that the amount available for support of this program in FY 2008 will be approximately $20 million. The anticipated funding breakdown for each category is:

- National Natural Resource Concerns Category: Up to $10 million;
- Chesapeake Bay Watershed Category: Up to $5 million;
- National Technology Category: Up to $5 million.

Funds will be awarded through a nationwide competitive grants process. Funds not used in one category may be shifted to another category by the Chief. The maximum award amount for any project will not exceed $1 million. CIG will fund single- and multi-year projects, not to exceed three years.

The available funding for the three national categories is anticipated to fund approximately 50 to 60 awards based on previous years' experience in administering CIG. The anticipated start date for awarded projects is September 1, 2008.

B. State Component

The intent of the State Component is to provide flexibility to NRCS State Conservationists to target CIG funds to individual producers and smaller organizations that may possess promising innovations, but may not compete well on the larger scale of the national grants competition. For FY 2008, the State Component of CIG will be available in select states at the discretion of the State Conservationist. Project applications that request federal funds of $75,000 or less and are not multi-state in scope will be forwarded to the appropriate state program manager if that state is participating in the State Component. All applications that are forwarded will be notified in writing, and provided with a contact for State Component information. Funding availability and application and submission information for state competitions will be announced through public notices (and on State NRCS Web sites) separately from this national notice. State Conservationists will determine the funding level for state competitions, with individual grants not to exceed $75,000.

III. Eligibility Information

CIG applicants must be a federally-recognized Indian Tribe; State or local unit of government; non-governmental organization; private business; or individual.

A. Matching Funds

Selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding (matching funds) for at least 50 percent of the project cost. Up to half of the applicant's matching funds (up to 25 percent of the total project cost) may be from in-kind contributions.

B. Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes

Information regarding the definitions for Limited Resource or Beginning Farmers and Ranchers can be found in the EQIP Final Rule, **Federal Register**, Vol. 68, No.104, Section 1466.3, Definitions. For the FY 2008 grant award process, up to 10 percent of the total funds available for CIG may be set-aside for applications from Beginning and Limited Resource Farmers and Ranchers, Indian Tribes, or community-based organizations comprised of or representing these entities. To compete for these set-aside funds, the applicant must make a declaration in the application as described in Part IV B.5. of this notice. Applications that are unsuccessful in the set-aside competition will be placed automatically in the general application pool for consideration. Funds not used in the set-aside pool will revert back into the general funding pool.

In addition, an exception regarding matching funds is made for projects funded out of the set-aside. Up to three fourths of the required matching funds for such projects (up to 37.5 percent of the total project cost) may derive from in-kind contributions. This exception is intended to help Beginning and Limited Resource Farmers or Ranchers and Indian Tribes meet the statutory requirements for receiving a Conservation Innovation Grant.

C. EQIP Payment Limitation and Duplicate Payments

Section 1240G of the Food Security Act of 1985 (as amended by the Farm Security and Rural Investment Act of 2002), 16 U.S.C. 3839aa–7, imposes a $450,000 limitation for all cost-share or incentive payments disbursed to individuals or entities under an EQIP contract between 2002 and 2008. The limitation applies to CIG in the following manner:

a. CIG funds are awarded through grant agreements; these grant agreements are not EQIP contracts. Thus, CIG awards in and of themselves are not limited by the payment limitation.

b. Direct or indirect payments made to an individual or entity using funds from a CIG award to carry out structural, vegetative, or management practices count toward each individual's or entity's EQIP payment limitation. Through project progress reports, CIG grantees are responsible for certifying that producers involved in CIG projects do not exceed the payment limitation. Further, all direct and indirect payments made to producers using CIG funds must be reported to the NRCS CIG program manager in the semi-annual report. Direct or indirect payments can not be made for a practice for which the producer has already received funds, or is contracted to receive funds, through any of the USDA Programs (EQIP, AMA, CSP, WHIP, etc.) since this would be considered a duplicate payment.

Payment Limitation Examples

Following are two examples of how the $450,000 EQIP payment limitation applies to CIG projects:

a. A $500,000 CIG grant is awarded to a State environmental agency to demonstrate an innovative, market-based, water quality trading program. The money is used to finance the development of a market infrastructure, and none of the funds are used to implement structural, vegetative, or management practices. Producers in the trading market demonstration area may indirectly benefit from their eventual participation in the market, but there is no direct or indirect transfer payment of CIG dollars. If, on the other hand, part of the CIG award were used to make payments to producers who implement conservation practices on their land as part of a trading program, those payments would count toward each producer's $450,000 EQIP payment limitation.

b. A $1,000,000 CIG grant is awarded to a Conservation District to pilot a community-based animal waste

treatment technology innovation. EQIP-eligible producers in the area transport their animal waste to a central treatment location. Because producers are not directly or indirectly receiving CIG funds, the payment limitation does not apply. If, however, the producers were paid for their waste, or for transporting their waste to the central treatment location using CIG funds, the payments would be subject to each producer's EQIP payment limitation.

D. Project Eligibility

All agricultural producers receiving direct or indirect payments through participation in a CIG project must meet the EQIP eligibility requirements as set forth in 16 U.S.C. 3839aa-1. Refer to *http://www.nrcs.usda.gov/programs/eqip/* for more information on EQIP eligibility requirements. Participating producers are not required to have an EQIP contract.

A person or entity is not eligible if the three-year average adjusted gross income (AGI) exceeds $2.5 million with less than 75 percent derived from farming, ranching, or forestry-related sources at the time of application.

A person who is determined ineligible for USDA program benefits under the Highly Erodible Land Compliance (HELC) and Wetland Compliance (WC) provisions of the Food Security Act of 1985 will not be eligible to receive direct or indirect payments through CIG.

Technologies and approaches that are eligible for funding in a project's geographic area through EQIP are ineligible for CIG funding except where the use of those technologies and approaches demonstrates clear innovation. The burden falls on the applicant to sufficiently describe the innovative features of the proposed technology or approach (applicants should reference the appropriate State's EQIP Eligible Practices List by contacting the NRCS State office, or by visiting the EQIP Web site: *http://www.nrcs.usda.gov/programs/eqip/EQIP_signup/2008_EQIP_Signup/index.html*.

The grantee is responsible for providing the technical assistance required to successfully implement and complete the project. NRCS will designate a Program Contact, an Administrative Contact, and a Technical Contact to provide oversight for each project receiving an award.

IV. Application and Submission Information

A. How To Obtain Application Materials

All OMB standard forms necessary for CIG submission are posted on the following Web site: *http://www.grants.gov/agencies/aapproved_standard_forms.jsp*. An application checklist is available on the CIG Web site: *http://www.nrcs.usda.gov/programs/cig*.

B. Application Content and Format

Applications must contain the information set forth below in order to receive consideration for a grant. Applicants should not assume prior knowledge on the part of NRCS or others as to the relative merits of the project described in the application. Submit applications in the following format:

Applications should be typewritten or printed on 8½″ x 11″ white paper, double spaced. The text of the application should be in a font no smaller than 12-point, with one-inch margins. If submitting applications for more than one project, submit a separate, complete application package for each project.

Applications must include all required forms and narrative sections described below. Incomplete applications will not be considered.

1. *Cover Sheet:* Applicants must use Standard Form 424 as the cover sheet for each project application. Standard Form 424 can be downloaded from *http://www.grants.gov/agencies/aapproved_standard_forms.jsp* or obtained from a NRCS State Office. (A list of NRCS State Offices is provided at the end of this announcement.)

2. *Project Summary Sheet:* Applicants must submit a Project Summary Sheet (no more than 2 pages in length) that includes the listed information. A template for the Project Summary Sheet is available on the NRCS CIG Web site: *http://www.nrcs.usda.gov/programs/cig*.

a. Project Title.

b. Project Director name and contact information (including e-mail).

c. Names and affiliations of project collaborators.

d. Project Purpose.

e. Project Deliverables/Products.

f. Project Scope/Area.

g. Project Start and End Dates (Projects should plan to begin no earlier than September 1, 2008 and no later than September 30, 2008).

h. CIG National Component Category (Natural Resource or Technology).

i. Application Review Category (water quality-livestock, water quality-non livestock, water quantity, soils, atmospheric, grazing land and forest health, wildlife habitat, or energy).

j. Declaration of EQIP eligibility.

k. Brief summary of project.

3. *Project Description:* Each project must be completely and accurately described in no more than 10 double-spaced pages. The description must include the following information:

a. Project background: Describe the history of, and need for, the proposed innovation. Provide evidence that the proposed innovation has been studied sufficiently to indicate a good probability for success of the project;

b. Project objectives: Be specific, using qualitative and quantitative measures, if possible, to describe the project's purpose and goals. Describe how, based on the description of innovative conservation projects and activities provided in section I.C., the project is innovative;

c. Project methods: Describe clearly the methodology of the project and the tools or processes that will be used to implement the project;

d. Location and size of project or project area: Describe the location of the project and the relative size and scope (e.g., acres, farm types and demographics, etc.) of the project area. Provide a map, if possible;

e. Producer participation: Estimate the number of producers involved in the project, and describe the extent of their involvement (all producers involved in the project must be eligible for EQIP);

f. Project action plan and timeline: Provide a table listing project actions, timeframes, and associated milestones through project completion;

g. Project management: Give a detailed description of how the project will be organized and managed. Include a list of key project personnel, their relevant education or experience, and their anticipated contributions to the project. Explain the level of participation required in the project by government and non-government entities. Identify who will participate in monitoring and evaluating the project;

h. Benefits or results expected and transferability: Identify the results and benefits to be derived from the proposed project activities, and explain how the results will be measured. Identify project beneficiaries—for example, agricultural producers by type or region or sector; rural communities; municipalities. Explain how these entities will benefit. In addition, describe how results will be communicated to others via outreach activities;

i. Project evaluation: Describe the methodology or procedures to be followed to evaluate the project, determine technical feasibility, and quantify the results of the project for the final report. (Grant recipients will be required to provide a semi-annual report of progress, quarterly financial reports, and a final project report to NRCS.

Instructions for submitting quarterly reports will be detailed in the grant agreement.); and

j. Environmental impacts: Describe the anticipated environmental effects of the proposed project. This description will be used to determine whether an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is needed for any given project, prior to the awarding of grant funds. The applicant is responsible for the cost of an EA or EIS, should one be required.

4. *Budget Information:* Must use Standard Form (SF) 424 A Budget Information Non-Construction Programs to document budget needs. SF 424 A is available at *http://www.grants.gov/agencies/aapproved_standard_forms.jsp* or can be obtained from a NRCS State Office. In addition to the SF424 A, all applicants must provide a detailed narrative in support of the budget for the project, broken down by each project year. Itemize the costs necessary for successful completion of the proposed project. Indicate the total amount (both cash and in-kind) of non-Federal matching support that will be provided to the proposed project. Identify and provide documentation of the source(s), the amount, and the nature (cash or in-kind) of the matching funds. If claiming indirect costs, an applicant must provide justification for the rate of indirect costs being claimed. Indirect costs can not exceed 15 percent. In-kind costs of equipment or project personnel cannot exceed 50 percent of the applicant's match (except in the case of projects carried out by either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities). The remainder of the match must be provided in cash.

5. *Declaration of Beginning Farmer or Rancher or Limited Resource Farmer or Rancher, or Indian Tribe:* If an applicant wishes to compete in the 10 percent set-aside funding pool (see Part III B. that describes the provision of a set-aside pool of funding for Beginning and Limited Resource Farmers or Ranchers, and Indian Tribes) and avail themselves of the in-kind contribution exception, applicants must make a declaration in writing of their status as a Beginning Farmer or Rancher or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities.

6. *Declaration of EQIP Eligibility:* Applicants must make a declaration in writing that they, or parties involved in the project, are eligible for EQIP.

7. *State Conservationist Letter of Review:* Applicants must send a copy of cover letter showing that the application was sent to the appropriate State Conservationist(s) for review. If a project is multi-state in scope, all states in the project area must be sent the application for review. The State Conservationist(s) will review the application for potential duplication of efforts, ethics concerns, consistency with overall EQIP objectives, and the expected benefits to EQIP implementation in their state(s). Applicants must send their application (at least the Project Description (Item 3) and the Budget Information (Item 4)) to the appropriate State Conservationist(s) postmarked, or dated if electronic, no later than February 15, 2008. State Conservationist(s) must submit letters to NRCS National Headquarters by March 7, 2008. A list of NRCS State Office addresses and phone numbers is included at the end of this notice. Applicants are encouraged to consult with the appropriate State Conservationist(s) during application development to discuss the letter of review.

8. *Certifications:* All applications must include a signed Standard Form (SF) 424 B—Assurances, Non-construction Programs. SF 424 B may be found at: *www.grants.gov/agencies/aapproved_standard_forms.jsp* or contact a NRCS State Office. Applicants, by signing and submitting an application, assure and certify that they are in compliance with the following from 7 Code of Federal Register (CFR):

a. Part 3017, Government wide Debarment and Suspension (Non-procurement) *http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3o17_04.html*

b. Part 3018, New Restrictions on Lobbying *http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3018_04.html*; and

c. Part 3021, Government wide Requirements for Drug-Free Workplace (Financial Assistance) *http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3021_04.html.*

9. *DUNS Number:* A Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of over 70 million businesses worldwide. A **Federal Register** notice of final policy issuance (68 FR 38402) requires a DUNS number in every application (i.e., hard copy and electronic) for a grant or cooperative agreement (except applications from individuals) submitted on or after October 1, 2003. For information about how to obtain a DUNS number go to *http://www.grants.gov/RequestaDUNS* or call 1–866–705–5711. Please note that the registration may take up to 14 business days to complete.

10. *Required CCR Registration:* The Central Contractor Registry (CCR) is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. CIG applicants must register with the CCR. To register, visit *http://www.ccr.gov.* Allow a minimum of 5 days to complete the CCR registration.

C. How To Submit a Written Application

Applicants must submit one signed original copy of each project application. Hard copies must be accompanied by an electronic copy on a 3½-inch diskette or compact disc (CD). Electronic files must be either Microsoft Word or Adobe Acrobat (pdf) files.

Applications submitted via facsimile or e-mail will not be accepted.

The address for hand-delivered applications or applications submitted using express mail or overnight courier service is: USDA Natural Resources Conservation Service, Conservation Innovation Grants Program, Financial Assistance Programs Division, Room 5239–S, 1400 Independence Ave, SW., Washington, DC 20250.

Contact phone numbers for hand-delivered applications (needed to enter the USDA South Building) are (202) 720–1845, (202) 720–2335, or (202) 205–1165.

The address for applications sent regular mail is: USDA Natural Resources Conservation Service, Conservation Innovation Grants Program, Financial Assistance Programs Division, Room 5239–S, Post Office Box 2890, Washington, DC 20013–2890.

D. How To Submit an Application Electronically

Applicants may submit applications electronically through *Grants.gov,* the Federal government's e-grants portal. Applications submitted through *Grants.gov* must contain all of the elements of a complete application outlined above. Instructions for electronically submitting the required standard forms, abstract, narrative, and declarations are posted on *Grants.gov.* The cover letter requesting the State Conservationist letter of review may be scanned as an attachment to the

application. Instructions for adding attachments are available on *Grants.gov.* Applications submitted electronically are date and time stamped by *Grants.gov* and must be received by the identified closing date. Note that NRCS is not responsible for any technical malfunctions or Web site problems related to *Grants.gov* submissions. Applicants should begin the *Grants.gov* process well before the submission deadline to avoid problems.

E. Application Due Date

Complete applications must be received in Room 5239–S at NRCS National Headquarters by 5 p.m. EST on February 20, 2008. A postmark date is NOT a factor in whether an application is received on time. The applicant assumes the risk of any delays in application delivery. Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to insure timely receipt by NRCS.

F. Acknowledgement of Submission

Applications received by the due date will be acknowledged with an official letter. If an applicant has not received an acknowledgement within 30 days of the submission, they must contact the NRCS programmatic contact (See Part VII). Failure to do so may result in the application not being considered for funding by the peer review panel.

G. Funding Restrictions

Awardees may not use un-recovered indirect costs as part of their matching funds.

CIG funds may not be used to pay any of the following costs unless otherwise permitted by law, or approved in writing by the Authorized Departmental Officer in advance of incurring such costs:

a. Costs above the amount of funds authorized for the project;

b. Costs incurred prior to the effective date of the grant;

c. Costs which lie outside the scope of the approved project and any amendments thereto;

d. Entertainment costs, regardless of their apparent relationship to project objectives;

e. Compensation for injuries to persons, or damage to property arising out of project activities;

f. Consulting services performed by a Federal employee during official duty hours when such consulting services result in the payment of additional compensation to the employee; and,

g. Renovation or refurbishment of research or related spaces; the purchase or installation of fixed equipment in such spaces; and the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

This list is not exhaustive. Questions regarding the allowances of particular items of cost should be directed to the administrative contact person listed below.

H. Patents and Inventions

Allocation of rights to patents and inventions shall be in accordance with USDA regulation 7 CFR 3019.36. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. In accordance with 7 CFR 3019.2, this provision will also apply to commercial organizations for the purposes of CIG. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

I. Withdrawal of Applications

Applications may be withdrawn by written notice at any time before an award is made. Applications may be withdrawn in person by the applicant, or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the application.

V. Application Review

A. Application Review and Selection Process

Prior to technical review, each application will be screened for completeness and compliance with the provisions of this notice. Incomplete applications and those that do not meet the provisions of this notice will be eliminated from competition, and notification of elimination will be mailed to the applicant.

Applications meeting the provisions of this notice will be scored by a Peer Review Panel. The applications will be divided among the peer review groups, based on the area selected by the applicant. The eight review areas for FY 2008 applications are: Water Quality-Livestock; Water Quality-Not Livestock; Water Quantity; Soils; Atmospheric; Grazing Land and Forest Health; Wildlife Habitat; and Energy. Applications will be scored based on the Criteria for Application Evaluation below. Scored applications will be forwarded to a Grants Review Board, which will certify the rankings from the peer review panels, and ensure that the application evaluations are consistent with program objectives. The CIG Grants Review Board consists of five members of NRCS leadership, specifically the Deputy Chief for Soil Survey and Resource Assessment, the Deputy Chief for Science and Technology, the Deputy Chief for Programs, one Regional Assistant Chief, and one State Conservationist. The Grants Review Board will make recommendations to the Chief for final selection and funding decisions.

B. Criteria for Application Evaluation

Peer review panels will use the following criteria to evaluate project applications. Each of the four criterions carries an equal weight of 25 percent.

1. Purpose and goals:

a. The purpose and goals of the project are clearly stated;

b. The project adheres to the natural resource conservation concerns for FY 2008 stated in this notice; and,

c. There is clear and significant potential for a positive and measurable outcome.

2. Soundness of approach or design:

a. The project adheres to the description of innovative projects or activities found in Part IC. of this notice;

b. Technical design and implementation strategy is based on sound science;

c. There is a good likelihood of project success;

d. The project substantively involves EQIP eligible producers; and,

e. The project promotes environmental enhancement and protection in conjunction with agricultural production.

3. Project management:

a. The application has clear milestones and timelines, designated staff, and demonstrates collaboration;

b. The project staff has the technical expertise needed to do the work; and

c. The budget is reasonable and adequately justified.

4. Transferability:

a. There is great potential to transfer the approach or technology to others and/or to other geographical areas; and,

b. The project will result in the development of technical or related materials (e.g., technical standards, technical notes, manuals, handbooks, software) that will help foster adoption of the innovative technology or approach by other producers, and in other geographic areas.

C. Anticipated Announcement and Award Dates

CIG Awards are anticipated to be announced by June 1, 2008. Funds are not awarded, and work may not start,

until an agreement is signed by both NRCS and the grantee. All agreements are expected to be awarded by August 15, 2008.

VI. Award Information and Administration

A. Award Notification

Applicants who have been selected will receive a letter of official notification from NRCS National Headquarters. This notice will indicate the need to work with the administrative contact to develop an agreement prior to starting work on the project. Applicants who are not selected will be notified by official letter.

B. Grant Agreement

The CCC, through NRCS, will use a grant agreement with selected applicants to document participation in the CIG component of EQIP. The grant agreement will include:

- Project purpose;
- Project objectives and deliverables;
- The final project plan listing cooperators in the project, and identifying the grant applicant and the project manager;
- The project timelines and expected project completion date;
- The project progress and budget reporting requirements;
- Award amount and budget information;
- Information regarding requests for advance of funds or reimbursement;
- The role of NRCS technical oversight in the project;
- Reporting requirements including attendance at CIG grantee biannual meeting;
- Changes in project plans; and
- Other requirements and terms deemed necessary by the CCC to protect the interests of the United States.

C. Reporting Requirements

Grantees receiving an advance of Federal funds of more than $25,000 are required to submit a SF–272 (Report of Federal Cash Transactions), and when necessary, the continuation sheet, SF–272-A, no later than 15 days following the end of each quarter or 90 days after project completion. These reports are used to monitor cash advanced to recipients and to obtain disbursement and outlay information for each award.

Grantees must submit a Financial Status Report (SF–269) no later than 30 days after the end of each quarter and 90 days after completion of project. The SF–272 and SF–269 are available at: *http://www.nrcs.usda.gov/programs/cig/InfoForGrantees.html*.

In addition, every six months the grantee must submit a written performance progress report to the NRCS program contact and the NRCS technical contact. This report is distinct from the quarterly financial report described above. Each progress report shall cover work performed during the previous 6-month period, including any funded or unfunded time extensions, a comparison of actual accomplishments to project goals, and a statement of work projected to be completed in the next 6-month period.

The grantee is responsible for providing the technical assistance required to successfully implement and complete the project. NRCS will designate a Program Contact, an Administrative Contact, and a Technical Contact to provide oversight for each project receiving an award.

To satisfy the requirements of EQIP (7 CFR part 1466) compliance measures, the grantee is required to submit as a component of the semi-annual progress report:

1. A list of producers, identified by name and social security number, of all EQIP-eligible producers or entities involved in the project.
2. The dollar amount of direct and indirect payment made to each individual producer or entity for any structural, vegetative, or management practices. Both quarterly and cumulative payment amounts must be submitted.
3. A self-certification indicating that each individual or entity receiving a direct or indirect payment through this grant is in compliance with the EQIP Payment Limitation, AGI, HEL, and Wetlands Conservation Compliance Farm Bill provisions.

A progress report template will be provided to grantees by the NRCS program contact. This template is also available on the NRCS CIG Web site at: *http://www.nrcs.usda.gov/programs/cig/InfoForGrantees.html.*

NRCS will designate a Program Contact and a Technical Contact for the project. These individuals will have technical oversight responsibility for the project. The grantee must send copies of each semi-annual progress report to these NRCS contacts, and comply with any requests for information from these individuals. NRCS recommends that the grantee work closely with these subject matter experts throughout the course of the project.

Upon passage of the completion date of the project, a final report must be submitted within 90 days detailing project activities, funding received, funding expended, results, and potential for transferability of results. The final report should address completion of the project deliverables listed in the grant agreement.

NRCS will host an annual meeting for CIG grantees and NRCS technical contacts. Grantees will be required to attend at least one of these sessions at their own expense.

VII. Agency Contacts

CIG Program Contact: Tessa Chadwick, CIG National Program Manager, 1400 Independence Ave, SW., Room 5237–S, Washington, DC 20250. Phone: (202) 720–2335, Fax: (202) 720–4265, e-mail: *tessa.chadwick@wdc.usda.gov.*

CIG Administrative Contact: Karen Minor, Grants and Agreements Team Leader, 1400 Independence Ave, SW., Room 5222–S, Washington, DC 20250. Phone: (202) 720–2604 or (202) 720–4102, Fax: (202) 720–2262, e-mail: *karen.minor@wdc.usda.gov.*

Additional information about CIG, including fact sheets and frequently asked questions (FAQs), is available on the CIG Web page: *http://www.nrcs.usda.gov/programs/cig.*

Signed in Washington, DC on December 10, 2007.

Arlen L. Lancaster,

Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.

VIII. Other Information

APPLICATIONS MISSING ANY OF THESE REQUIRED ITEMS WILL NOT BE CONSIDERED

Fiscal Year 2008 Application Package Checklist

☐ 1. Application Cover Sheet: Complete Standard Form 424 (SF–424).

☐ 2. Project Summary Sheet: (2 page maximum; template available))

a. Project Title;

b. Project Director name and contact information (including e-mail);

c. Names and affiliations of project collaborators;

d. Project Purpose;

e. Project Deliverables/Products;

f. Project Scope/Area;

g. Project Start and End Dates (Projects should plan to begin no earlier than September 1, 2008 and no later than September 30, 2008);

h. CIG National Component Category (Natural Resource or Technology);

i. Application Review Category (water quality-livestock, water quality-non livestock, water quantity, soils, atmospheric, grazing land and forest health, wildlife, or energy);

j. EQIP Eligibility Declaration;

k. Brief summary of project.

☐ 3. Project Description: (10 pages maximum, double spaced, 12 point font)

a. Project background;
b. Project objectives;
c. Project methods;
d. Location and size of project area (include a map if possible);
e. Producer participation;
f. Project action plan and timeline;
g. Project management;
h. Benefits or results expected and transferability;
i. Project evaluation; and
j. Environmental impacts.

☐ 4. Budget Information: Submit a completed SF–424A, a DETAILED budget narrative, and DOCUMENTATION showing matching funds available.

☐ 5. Declaration of Beginning Farmer or Rancher, Limited Resource Farmer or Rancher, or Indian Tribe (Special Provisions): If applicable, include a statement declaring your status as a Beginning Farmer or Rancher, Limited Resource Farmer or Rancher, Indian Tribe, or Community-based Organization representing these entities.

☐ 6. Declaration of EQIP Eligibility: Include a statement indicating that all producers receiving direct or indirect payments will be eligible for EQIP participation.

☐ 7. Documentation that application was sent to all appropriate State Conservationist(s) requesting a letter of review.

☐ 8. Certifications: Complete Standard Form 424b (SF–424b).

☐ 9. DUNS Number: For information about how to obtain a DUNS number go to *http://www.grants.gov/RequestaDUNS* or call 1–866–705–5711. Please note that the registration may take up to 14 business days to complete.

☐ 10. Required CCR Registration: Visit *www.ccr.gov* to register.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2336 and (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2006, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on carbazole violet pigment 23 from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006). On December 29, 2006, Nation Ford Chemical Company and Sun Chemical Company (''Petitioners'') requested that the Department conduct an administrative review of 13 companies, including Trust Chem Co. Ltd. (''Trust Chem''). On January 4, 2007, Trust Chem also requested an administrative review of its exports. The Department published a notice of initiation of the antidumping duty administrative review of carbazole violet pigment 23 from the PRC for the period December 1, 2005, through November 30, 2006, covering the 13 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On May 2 and May 3, 2007, Petitioners withdrew their request for an administrative review of the 12 companies for which they were the sole requestor. On June 25, 2007, the Department published a notice rescinding the review on these 12 companies. *See Carbazole Violet Pigment 23 From the People's Republic of China: Notice of Rescission, in Part, of Antidumping Duty Administrative Review*, 72 FR 34670 (June 25, 2007). Therefore, Trust Chem is the sole party who remained covered by this administrative review.

Rescission of Review

On November 19, 2007, the Department issued a memorandum stating its intent to rescind the administrative review on Trust Chem because there are no entries on which the Department can assess duties during the POR. See Memorandum regarding, ''Intent to Rescind Antidumping Duty Administrative Review on Trust Chem Company Limited for Carbazole Violet Pigment 23 from the People's Republic of China'' (November 19, 2007) (''Intent

to Rescind Memo''). As stated in the Intent to Rescind Memo, it is the Department's practice not to conduct an administrative review when there are no entries to be reviewed. Furthermore, pursuant to 19 CFR 351.213(d)(3), the Department will rescind an administrative review in whole or with respect to a particular exporter if it concludes that during the POR there were ''no entries, exports, or sales of the subject merchandise.'' *Id*. For a detailed discussion of the specific reasons the Department is rescinding this review with regard to Trust Chem, which are not subject to public summary, *see* the Intent to Rescind Memo.

The Department invited all interested parties to submit comments on its Intent to Rescind Memo, but did not receive any comments. Therefore, based on the Department's practice supported by substantial precedent, the Department is rescinding the review with respect to Trust Chem, pursuant to 19 CFR 351.213(d)(3).[1]

Notification Regarding APOs

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

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 10, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–24368 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] See e.g., Certain Cut-to-Length Carbon-Quality Steel Products from Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 39299, 39302 (July 12, 2006). See also Notice of Final Results of Antidumping Duty Administrative Review: Portable Electric Typewriters from Japan, 56 FR 14072, 14073 (April 5, 1991).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC'') on July 11, 2007. The period of review (''POR'') is June 1, 2005, through May 31, 2006. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4243 or (202) 482–0650, respectively.

Background

On July 11, 2007, the Department published its preliminary results.[1] On July 31, 2007, Meco Corporation (''Meco''), the petitioner in the underlying investigation, provided additional comments on the appropriate surrogate values to use as a means of valuing the factors of production, including financial statements from Infiniti Modules Pvt. Ltd. (''Infiniti'') and Agew Steel Manufactures Private Limited (''Agew''), Indian producers of merchandise that is identical or comparable to the subject merchandise. On August 3, 2007, Meco requested an extension of the briefing schedule, and on August 7, 2007, the Department denied this request. On August 10, 2007, the Department received a case brief that included a request for a hearing from Meco. On August 13, 2007, the Department received a case brief from Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City (collectively ''Feili''). On August 13, 2007, Meco requested an extension to submit its rebuttal brief and on the same day, the Department granted to all parties a seven-day extension to submit rebuttal briefs. On August 22, 2007, Meco, New–Tec Integration Co., Ltd. (''New–Tec''), and Feili submitted rebuttal briefs. On September 27, 2007, Meco withdrew its request for a hearing. On November 6, 2007, the Department extended the time period for completion of the final results until December 7, 2007.[2]

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Scope of Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

a. Lawn furniture;
b. Trays commonly referred to as ''TV trays;''
c. Side tables;
d. Child–sized tables;
e. Portable counter sets consisting of rectangular tables 36'' high and matching stools; and,
f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28'' to 36'' wide by 48'' to 96'' long and with a set of folding legs at each end of the table.

[1] *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 37703 (July 11, 2007) (''*Preliminary Results*'').

[2] *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review*, 72 FR 62628 (November 6, 2007).

One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;
b. Lawn furniture;
c. Stools;
d. Chairs with arms; and
e. Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC, the Department ruled on January 13, 2003, that poly–fold metal folding chairs are within the scope of the order.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (''Staples''), the Department issued a scope ruling that the chair component of Staples' ''Complete Office–To-Go,'' a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order.

On July 13, 2005, the Department issued a scope ruling determining that ''butterfly'' chairs are excluded from the scope of the antidumping duty order. Butterfly chairs are described as consisting of a collapsible metal rod frame and a cover, such that when the chair frame is spread open, the pockets of the cover are slipped over the upper ends of the frame and the cover provides both the seating surface and back of the chair. The frame consists of eight s–shaped pieces (with the ends offset at almost a 90–degree angle) made from metal rods that are connected by hinges. In order to collapse the frame, the chair cover must be removed. The frame is collapsed by moving the four legs inward until they meet in the center, similar to the folding mechanism of a pocket umbrella.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs, with wooden seats that have been padded with foam and covered with fabric or polyvinyl chloride and attached to the tubular steel seat frame with screws, are within the scope of the antidumping duty order.

On May 1, 2006, the Department issued a scope ruling determining that ''moon chairs'' are not included within the scope of the antidumping duty order. Moon chairs are described as containing circular, fabric–padded, concave cushions that envelop the user at approximately a 105–degree reclining angle. The fabric cushion is ringed and supported by two curved 16–mm steel tubes. The cushion is attached to this ring by nylon fabric. The cushion is supported by a 16–mm steel tube four–sided rectangular cross–brace mechanism that constitutes the moon chair's legs. This mechanism supports and attaches to the encircling tubing and enables the moon chair to be folded. To fold the chair, the user pulls on a fabric handle in the center of the seat cushion of the chair.

On October 4, 2007, the Department issued a scope ruling determining that International E–Z Up Inc.'s (''E–Z Up'') Instant Work Bench is not included within the scope of the antidumping duty order because its legs and weight do not match the description of the folding metal tables in the scope of the FMTCs order or *Certain Folding Metal Tables and Chairs from China*; USITC Pub. 3515 at I–3, 731–TA–932 (Final), (June 2002) (''*ITC Final Report*''). E–Z Up describes the Instant Work Bench as a personal project center that is permanently mounted on a wall. E–Z Up states that the physical characteristics of the Instant Work Bench include a plastic table top measuring 60.25 inches in width and 24.5 inches in depth, four steel legs with two legs attached to a wall, a metallic coated peg board extending vertically from the intersection of the back legs and the table top, and two sliding reinforced steel drawers located below the plastic bench. E–Z Up adds that the back two legs are connected to each other by a steel frame that consists of two cross–bars and five vertical bars. E–Z Up also states that the Instant Work Bench weighs 70.7 pounds, of which 54.7 percent is steel, and measures 60 inches in height from the top of the peg board to the floor.[3]

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2005–2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China'' (December 7, 2007) (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Feili and New–Tec.[4]

b. Feili and New–Tec

- We calculated the surrogate financial ratios using financial statements of two companies, Godrej & Boyce, Manufacturing Co. Ltd. (''Godrej'') and Infiniti.[5]

[3] *See* ''Final Scope Ruling of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China (A-570-868); E-Z Up's Instant Work Bench'' (October 4, 2007).

[4] *See* Issues and Decision Memorandum, at Comments 1-16.

[5] *See* Comment 1 of the Issues and Decision Memorandum and the Memorandum to Wendy J. Frankel, Director, AD/CVD Operations, Office 8, ''Final Results of the 2005-2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum,'' (December 7, 2007) (''Final

Feili

- We revised the calculation of the market–economy purchase price for rivets to exclude the total quantity and value of powder coating from the calculations.[6]
- We revised the calculation of normal value (''NV'') to eliminate fiberboard as a packing material.[7]
- We revised the calculation of NV to exclude packing labor from the cost of manufacturing and include it in the calculation of packing.[8]
- We revised the sample interspersion check to exclude from the margin analysis program only those transactions that had not been previously made in commercial quantities to the same customer.[9]

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2005, through May 31, 2006:

Exporter/Manufacturer	Weighted–Average Margin Percentage
Feili*	0.02
New–Tec	1.50

*This rate is *de minimis*.

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the date of publication of these final results of administrative review.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (''the Act''): (1) for subject merchandise exported by Feili, the final weighted–average margin is below *de minimis*; therefore, no cash deposit of estimated antidumping duties will be required. However, for subject merchandise exported by New–Tec, the cash–deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated exporters not listed above that have separate rates, the cash–deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 70.71 percent; and (4) for all non–PRC exporters of subject merchandise that have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 of the final results of this administrative review is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum

Comment 1: Surrogate Financial Statements
Comment 2: Potential Calculation Adjustments to Infiniti's Financial Statements
Comment 3: Allocation of Direct Labor Hours for Feili
Comment 4: Allocation of Electricity for Feili
Comment 5: Suspension of Liquidation of Tables with Legs Connected by a Cross–Bar
Comment 6: Revocation of the Order
Comment 7: Market–Economy Price for Rivets
Comment 8: Fiberboard Consumption
Comment 9: Packing Labor
Comment 10: Zero–Priced Transactions
Comment 11: Zero–Priced Transactions not Previously Sold in Commercial Quantities
Comment 12: Shipping Costs for Zero–Priced Transactions
Comment 13: Negative Values for Importer–Specific Assessment Rates
Comment 14: The Treatment of Origin Receiving Charges (''ORC'') and automated–manifest-system charges (''AMS'')
Comment 15: Adjustments for Materials That Were Provided Free–of-Charge
Comment 16: Offsetting Dumped Sales with ''Non–Dumped'' Sales (''Zeroing'')

[FR Doc. E7–24366 Filed 12–14–07; 8:45 am]

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Surrogate Value Memorandum''), at 1, and Attachment XIII.

[6] *See* Comment 7 of the Issues and Decision Memorandum and Memorandum to the File ''Analysis for the Final Results of the 2005-2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively, ''Feili'')'' (December 7, 2007) (''Feili Final Analysis Memorandum''), at 2, and Attachments I and II.

[7] *See* Comment 8 of the Issues and Decision Memorandum, and Feili Final Analysis Memorandum, at 2, and Attachments I and IV.

[8] *See* Comment 9 of the Issues and Decision Memorandum, and Feili Final Analysis Memorandum, at 3, and Attachments III and IV.

[9] *See* Comment 11 of the Issues and Decision Memorandum, and Feili Final Analysis Memorandum, at 3, and Attachments IV and V.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Certain Hot–Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 9, 2007, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania. This review covers sales of subject merchandise made by Mittal Steel Galati S.A. The period of review is November 1, 2005, through October 31, 2006. Based on our analysis of comments received, we have made a change to our calculations; this change did not result in a change to the margin for Mittal Steel Galati S.A. Therefore, these final results are identical to our preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: (December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, AD/

CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4033 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2007, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of certain hot–rolled carbon steel flat products from Romania (*Certain Hot–Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 44821 (August 9, 2007) (*Preliminary Results*)). The review covers one manufacturer, Mittal Steel Galati S.A. (MS Galati).

We invited parties to comment on our preliminary results of review. MS Galati and one domestic interested party, United States Steel Corporation, filed case briefs on September 12, 2007. MS Galati and two domestic interested parties, United States Steel Corporation and Nucor Corporation, filed rebuttal briefs on September 19, 2007.

On October 31, 2007, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission determined that revocation of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania would not be likely to lead to continuation or recurrence of material injury. See *Hot Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 72 FR 61676 (October 31, 2007), and USITC Publication 3956 (October 2007), entitled *Hot Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine: Investigation Nos. 701 TA 404 408 and 731 TA 898 902 and 904- 908* (Review). As a result of this determination, the Department revoked the antidumping duty order on certain hot–rolled carbon steel flat products from Romania, effective as of November 29, 2006. See *Certain Hot–Rolled Carbon Steel Flat Products from Argentina, Kazakhstan, Romania, and South Africa: Revocation of Antidumping Duty and Countervailing Duty Orders*, 72 FR 65293 (November 20, 2007).

Scope of the Order

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

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

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, 2.25 percent of silicon, 1.00 percent of copper, 0.50 percent of aluminum, 1.25 percent of chromium, 0.30 percent of cobalt, 0.40 percent of lead, 1.25 percent of nickel, 0.30 percent of tungsten, 0.10 percent of molybdenum, 0.10 percent of niobium, 0.15 percent of vanadium or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order: Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506); Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher; ball bearing steels, as defined in the HTSUS; tool steels, as defined in the HTSUS; silicomanganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent; ASTM specifications A710 and A736; USS abrasion–resistant steels (USS AR 400, USS AR 500); all products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507); non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

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

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and

Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated December 7, 2007, which is hereby adopted by this notice. A list of the issues which the parties have raised and to which we have responded is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and corresponding recommendations in this public memorandum which is on file in Import Administration's Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum is available on the Internet at http://iaita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made a methodological change to our calculations as reflected in our *Preliminary Results* (see Comment 1 of the Decision Memorandum).

Final Results of Review

As a result of our review, we determine that the following weighted–average percentage margin exists for the period November 1, 2005, through October 31, 2006:

Manufacturer/exporter	Margin (percent)
Mittal Steel Galati S.A.	11.02

Assessment Rate

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate by dividing the total dumping duties due by the entered value of sales we analyzed. We will direct CBP to liquidate the appropriate entries at this rate. See 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by the company included in these final results of review for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash–Deposit Requirements

Because the Department has revoked the order as discussed in the Background section, there will be no cash–deposit requirements for entries of this merchandise on or after November 29, 2006.

Notification

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Date of Sale

Comment 2: Offsetting of Negative Margins

[FR Doc. E7–24279 Filed 12–14–07;

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–806]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from Sweden

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

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C., 20230; telephone: (202) 482–1766 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel wire rod from Sweden, covering the period September 1, 2005, through August 31, 2006. *See Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51411 (September 7, 2007). The current deadline for the final results in this review is January 5, 2008.

Extension of Time Limits for Final Results of Review

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

The Department finds that it is not practicable to complete the final results of the administrative review of stainless steel wire rod from Sweden within the current time frame because the Department requires more time to fully analyze the arguments and comments received from the parties participating in this review with respect to the

product comparison criteria currently being used in this case.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time for completion of the final results of this review until March 5, 2008, which is 180 days after the date on which notice of the preliminary results was published in the **Federal Register**.

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

Dated: December 11, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–24375 Filed 12–14–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty–Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific andCultural Materials Importation Act of 1966 (Pub. L. 89–651, asamended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), weinvite comments on the question of whether instruments ofequivalent scientific value, for the purposes for which theinstruments shown below are intended to be used, are beingmanufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of theregulations and be filed within 20 days with the Statutory ImportPrograms Staff, U.S. Department of Commerce, Room 2104, 14th and Constitution Avenue NW, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 2104, at the above address.

Docket Number: 07–070. Applicant: State University of New York at Binghamton, 4400 Vestal Parkway East, Binghamton, NY 13902. Instrument: Scanning Acoustic Microscope. Manufacturer: Klaus Pintsch, Inc., Germany. Intended Use: The instrument is intended to be used as a research tool for professors and graduate student level researchers. The research is to advance the science and engineering behind modern electronics packaging practices and to develop new packaging paradigms. Research is underway in all areas of packaging, solders, board and package construction, chip joining, roll to roll manufacturing and even fabricating active devices on flexible substrates. The instrument provides a nondestructive means to see into packages and examine the bonding layers and interfaces. Having a spatial resolution of .5 micron or less is a critical parameter because it is one of the factors that determines the minimum feature size that can be detected and imaged. Application accepted by Commissioner of Customs: November 7, 2007.

Dated: December 7, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–24278 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific andCultural Materials Importation Act of 1966 (Pub. L. 89–651, asamended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before January 7, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 2104.

Docket Number: 07–068. Applicant: University of Utah, 201 S. President's Circle, Salt Lake City, UT 84112. Instrument: Electron Microscope, Model Nova NanoSEM 430. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used for the imaging of nanoparticles as well as chemical characterization of a wide variety of materials. The instrument will also be used to measure the size and chemical composition of nanoparticles and nanostructures and to create nanostructures using electron beam lithography. The objectives of the experiments will be to characterize the size and shapes of nanoparticles, nantubes and nanowires and determine the chemical composition of clays and other mineralogical samples. Application accepted by Commissioner of Customs: November 13, 2007.

Docket Number: 07–069. Applicant: The Children's Hospital, 1056 E. 19th Ave., Denver, CO 80218. Instrument: Electron Microscope, Model H–7650. Manufacturer: Hitachi High–Technologies Corporation, Japan. Intended Use: The instrument will be used in the anatomical pathology laboratory to evaluate various human tissues, aiding in diagnostic interpretations. Application accepted by Commissioner of Customs: November 6, 2007.

Dated: December 7, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E7–24277 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (PRC). For information on the estimated subsidy rates, *see* the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination. *See* ''Disclosure and Public Comment'' section below for procedures on filing comments.

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Jun Jack Zhao, or Nicholas Czajkowski, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3148, (202) 482–1396, and (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR

44122 (August 7, 2007) (*Initiation Notice*).

On August 17, 2007, the Department selected, as mandatory respondents, the three largest Chinese producers/exporters of OTR tires that could reasonably be examined: Guizhou Tire Co., Ltd. (Guizhou Tire), Hebei Starbright Tire Co., Ltd. (Starbright), and Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Respondent Selection'' (August 17, 2007). This memorandum is on file in the Department's Central Records Unit in Room B–099 of the main Department building (CRU). On that same day, we issued a countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC), requesting the GOC forward the company sections of the questionnaire to the mandatory respondents.

On August 27, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of OTR tires from China. *See Certain Off-the-Road Tires From China*, Investigation Nos. 701–TA–448 and 731–TA–1117 (Preliminary), 72 FR 50699 (September 4, 2007).

On September 17, 2007, we published a postponement of the preliminary determination of this investigation until December 7, 2007. *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 72 FR 52859 (September 17, 2007).

On August 20, 2007, Aeolus Tyre Co., Ltd. (Aeolus) submitted a request to be a voluntary respondent in this investigation; on September 20, 2007, Aeolus renewed its request to be a conditional voluntary respondent. Aeolus' request was conditioned on certain eventualities, such as being selected as a respondent in the accompanying antidumping investigation, which it was not. On September 24, 2007, petitioners submitted comments to the Department arguing we should reject Aeolus's request to be a voluntary respondent. On October 3, Aeolus withdrew its request.

On October 5, 2007, we initiated an investigation of several new subsidy allegations. *See* Memorandum to the File, ''Countervailing Duty Investigation on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation Analysis for New Subsidy Allegations'' (October 5, 2007). The allegations were submitted on August 24 by Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, petitioners) and on September 5 by Bridgestone Americas Holding, Inc. and its subsidiary, Bridgestone Firestone North America Tire, LLC (collectively, Bridgestone), a U.S. domestic producer of OTR tires.[1] Petitioners submitted additional information supporting their new allegations on September 5; Bridgestone submitted additional information supporting its new allegation on September 19 and October 1. On September 21 and September 26, the GOC, Starbright and TUTRIC submitted comments on these new subsidy allegations. On October 5, we issued questionnaires concerning these new allegations to the GOC and the mandatory respondents.

On October 15, 2007, we received responses to our initial questionnaire from the GOC, Guizhou Tire, Starbright, and TUTRIC. On October 19 and 22, Bridgestone submitted comments regarding the questionnaire responses from the GOC, Guizhou Tire, Starbright, and TUTRIC; also on October 22 and 23, petitioners submitted comments regarding the questionnaire responses from the GOC, Guizhou Tire, Starbright, and TUTRIC. On October 29, we received responses to our questionnaires concerning the new subsidy allegations from the GOC, Guizhou Tire, Starbright, and TUTRIC. On November 1, 2 and 5, Bridgestone submitted comments regarding the new subsidy allegation questionnaire responses from the GOC, Guizhou Tire, Starbright, and TUTRIC; and on November 2 and 5, petitioners submitted comments regarding the new subsidy allegation questionnaire responses from the GOC, Guizhou Tire, Starbright, and TUTRIC. Supplemental questionnaires regarding all these submissions were issued to Guizhou Tire, Starbright, and TUTRIC on November 9, and to the GOC on November 14. We received responses on November 27, 2007.

In our initial questionnaire, we asked for information concerning alleged subsidies received during the period 1993 through the POI (based on our finding in accordance with section 351.524(d)(2) that the average useful life (AUL) of assets used in producing OTR Tires was 14 years). In our supplemental questionnaires, we limited our inquiry to subsidies received during or after 2001, pursuant to a recent preliminary determination that December 11, 2001 (the date on which the PRC became a WTO member) was the uniform date from which the Department will identify and measure subsidies for purposes of the CVD law.[2] However, given that the final determination regarding this uniform date will not be issued before March 18, 2008, the Department, on November 21, informed the GOC and the three OTR tire respondents that information was required for all non-recurring subsidies received during the AUL. The deadline for submitting information concerning pre-2001 subsidies is currently December 12, 2007.

On November 14, 2007, the Department initiated an investigation of an additional new subsidy allegation pertaining only to Guizhou Tire, pursuant to information submitted by petitioners on October 23 and additional information on November 2. *See Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation Analysis for New Subsidy Allegation* (November 14, 2007). On that same day, November 14, we also issued a questionnaire concerning this allegation to the GOC and Guizhou Tire. The deadline for responding to this questionnaire is currently December 10, 2007. We intend to issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

On November 9, 2007, petitioners submitted comments on loan benchmarks. On November 28, 29 and 30, respectively, Bridgestone, petitioners and the GOC submitted pre-preliminary comments. On December 4, Starbright and TUTRIC submitted pre-preliminary comments. On December 5, Starbright submitted additional pre-preliminary comments.

Scope of the Investigation

The products covered by the scope of this investigation are new pneumatic

[1] Since Bridgestone is a U.S. producer, it meets the definition of interested party as set forth in section 771(9) of the Tariff Act of 1930, as amended (the Act).

[2] *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 63875, 63880 (November 13, 2007) (*CWP Preliminary*)

tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[3] combine harvesters,[4] agricultural high clearance sprayers,[5] industrial tractors,[6] log-skidders,[7] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders; [8] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[9] front endloaders,[10] dozers,[11] lift trucks, straddle carriers,[12] graders,[13] mobile cranes, compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[14] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156'' or plus 0.250'';
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation. Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind used on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and, tires of a kind used for mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Scope Comments

In accordance with the preamble to the Department's regulations, in our *Initiation Notice* we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*) and *Initiation Notice*, 72 FR at 41222. On August 20, 2007, the following parties submitted comments concerning both the scope of this investigation and the identical scope of the companion antidumping duty

[3] Agricultural tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow farming equipment.

[4] Combine harvesters are used to harvest crops such as corn or wheat.

[5] Agricultural sprayers are used to irrigate agricultural fields

[6] Industrial tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow industrial equipment.

[7] A log skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[8] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[9] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[10] Front loaders have lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

[11] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[12] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[13] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[14] A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

investigation: Petitioners, Bridgestone, Carlisle Tire and Wheel Company, Guizhou Tire, and Valmont Industries, Inc. On August 21, comments on the scope were submitted to both records by Agri-Fab, Inc. On August 27, rebuttal comments were filed on both records by petitioners, Bridgestone, and Guizhou Tire. The Department will address the issues raised by these parties with regard to both investigations in the preliminary determination of the antidumping duty investigation currently scheduled for February 5, 2008.

Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and the accompanying *Issues and Decision Memorandum* (*CFS Final*). In that determination, the Department found that ''given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.'' *See CFS Final* at Comment 6. This decision was also affirmed in three recent preliminary determinations. *See CWP Preliminary*, 72 FR at 63880, *Laminated Woven Sacks from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances; and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67893 (December 3, 2007) (*LWS Preliminary*), and *Light-walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67703 (November 30, 2007).

For the reasons stated in *CWP Preliminary*, we are using the date of December 11, 2001, the date on which the PRC became a member of the WTO, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *Id.* As explained in *CWP Preliminary*, prior to December 11, 2001, there were many changes in the PRC's economy. Many of the obligations undertaken by the PRC pursuant to its accession to the WTO were in line with the PRC's objective of economic reform. *See*, *e.g.*, Report of the Working Party on the Accession of China, WT/ACC/CHN/49 (October 1, 2001) at paragraph 4 (found at *www.wto.org*). Taken together, these changes permit the Department to determine whether the GOC has bestowed a countervailable subsidy on Chinese producers. *See CFS Final* at Comments 1 and 6. Finally, the GOC acknowledged the changing nature of its economy insofar as its accession protocol contemplates the application of the CVD law to the PRC, even while it remains a non-market economy (NME). *See* Protocol of Accession of the People's Republic of China, WT/L/432 (November 23, 2001) at section 15(b) (found at *www.wto.org*); *see*, *also*, *CFS Final* at Comment 1. Therefore, for this preliminary determination, we have selected the date of December 11, 2001, as the date from which we will measure countervailable subsidies in the PRC.

Period of Investigation

The period for which we are measuring subsidies, or the POI, is calendar year 2006.

Subsidies Valuation Information

Allocation Period

The allocation period for non-recurring subsidies is normally the AUL as described in 19 CFR 351.524(d)(2). The AUL applicable to the OTR tire industry is 14 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System. No party in this proceeding has disputed this allocation period.

Cross-Ownership

The Department's regulations at section 351.525(b)(6)(vi) state that cross-ownership exists between corporations if one corporation can use or direct the individual assets of the other corporation(s) in essentially the same way it uses its own. This section of the Department's regulations states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. Section 351.525(b)(6)(iii) of the Department's regulations states that ''if the firm that received the subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries.'' The Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d. 593, 604 (CIT 2001).

Guizhou Tire reported that it is affiliated with numerous companies. Of these, according to Guizhou Tire, two are involved in the production or sale of subject merchandise: Guizhou Advance Rubber Co., Ltd. (Guizhou Rubber), a producer of subject merchandise, and Guizhou Tire I&E Corp. (GTCIE), which serves as Guizhou Tire's export department for OTR tires.[15] Guizhou Tire owns 98.75 percent of Guizhou Rubber and 100 percent of GTCIE. Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Guizhou Tire is cross-owned with Guizhou Rubber, and, pursuant to 19 CFR 351.525(b)(6)(ii), we are attributing the subsidies received by Guizhou Tire and Guizhou Rubber to the combined sales of Guizhou Tire and Guizhou Rubber. Pursuant to 19 CFR 351.525(c), we are cumulating the benefits from subsidies provided to GTCIE with benefits from subsidies provided to Guizhou Tire. Both Guizhou Rubber and GTCIE have provided responses to the Department's questionnaires.

TUTRIC also reported numerous affiliations. Of these, one is a state-owned parent company, described by TUTRIC as a ''holding company,'' and another is a supplier of carbon black, Dolphin Carbon Black (DCB), an input consumed in the production of tires. TUTRIC reports that the input supplier is also a subsidiary of the holding company. The others are either located outside the PRC or not involved in the production or sale of subject merchandise.[16] Our analysis indicates that the holding company and the input supplier are essentially the same entity and that this entity controls TUTRIC. (The details of this analysis are business proprietary and are discussed in the Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations,

[15] A third company is involved in domestic distribution.

[16] TUTRIC also claims affiliation with Starbright, one of the other two respondents in this case, based on both companies having a relationship with GPX International Tire Co. (GPX). Starbright also makes this claim. GPX is the sole owner of Starbright, and the nature of its relationship with TUTRIC is business proprietary. The Department, however, preliminarily determines that neither TUTRIC's relationship with GPX or Starbright rises to the level of cross-ownership. TUTRIC does not share board members or officers with these companies, for example, and the facts otherwise do not demonstrate that TUTRIC and either of these companies could ''use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets.'' 19 CFR 351.525(b)(6)(vi).

Office 6, from Mark Hoadley, Case Analyst, ''TUTRIC's Cross-Ownership'' (December 7, 2007).) As such, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that TUTRIC is cross-owned with its parent/holding company, and, pursuant to 19 CFR 351.525(b)(6)(iii), we are attributing the subsidies received by its parent/holding company to the combined sales of TUTRIC and the parent/holding company (hereinafter, DCB).

Denominator

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considered the basis for respondents' receipt of benefits under each program at issue. We have preliminarily found that TUTRIC's, Guizhou Tire's, and Starbright's receipt of benefits under the programs found countervailable was not tied to export performance or to the production of a particular product. As such, for subsidies received by TUTRIC, Guizhou Tire, or Starbright, we are using that company's sales (and those of its cross-owned affiliates where applicable) of all products as the denominator in our calculations. *See* 19 CFR 351.525(b)(3).

As discussed in the ''Cross-Ownership'' section above, Guizhou Tire is cross-owned with Guizhou Rubber, a producer of subject merchandise that received benefits that were not tied to export performance or to the production of a particular product. As such, for benefits received by Guizhou Rubber, we are using total sales of all products by Guizhou Tire and its cross-owned producer of subject merchandise (less any internal sales between Guizhou Tire and its cross-owned producer) as the denominator in our calculations. *See* 19 CFR 351.525(b)(6)(iv).

Also as discussed in the ''Cross-Ownership'' section above, we have preliminarily found that TUTRIC is cross-owned with a parent company that received subsidies that were not tied to export performance or to the production of a particular product. As such, for benefits received by TUTRIC's cross-owned parent company, we are using total sales of all products by TUTRIC and its cross-owned parent company (less any internal sales between TUTRIC and its cross-owned parent company) as the denominators in our calculations. *See* 19 CFR 351.525(b)(6)(iii).

Change In Ownership

Starbright states that it was created in 2006 when it purchased substantially all the assets of Hebei Tire Co., Ltd. (Hebei Tire). Starbright claims that it is unable to provide information concerning subsidies received by Hebei Tire before the purchase, but that Hebei Tire had never been a (foreign invested enterprise) (FIE) and had not been an SOE since 2000. Starbright also claims it purchased Hebei Tire at arm's length and for fair market value, and responded to the Department's standard change-in-ownership appendix. In doing so, it claims the sale was at arm's length, as it had no relationship with Hebei Tire and no relationship with the GOC. It also provides a reconciliation between the assets it purchased and their assessed value, thus, according to Starbright, demonstrating they were purchased at fair market value. Starbright also provides a reconciliation between the debt it paid off on behalf of Hebei Tire and the lending section of Hebei Tire's balance sheet at the approximate time of sale.

Petitioners and Bridgestone have stated their concerns with the failure of Starbright and the GOC to provide information concerning past non-recurring subsidies received by Hebei Tire that might continue to be benefitting Starbright. In particular, these parties are concerned that Hebei Tire may have benefitted from debt forgiveness provided by Hebei Province prior to the sale of the company to Starbright, one of the new subsidy allegations on which the Department initiated an investigation on October 5. In addition, according to petitioners and Bridgestone, it is clear from the record that Hebei Tire had loans from state-owned commercial banks and acquired land-use rights from the GOC, two more potential sources of non-recurring subsidies.

The Department determines that additional information is needed before a full evaluation of this change in ownership can be made. Among other things, further information is required to determine whether Hebei Tire was an SOE or was otherwise related to or controlled by the GOC at the time of sale, as this impacts the application of our change in ownership methodology. This determination involves examining particular PRC entities and their relationship to the government that the Department has not yet examined within the context of a CVD investigation. Furthermore, regardless of Hebei Tire's relationship to the GOC, the Department needs additional information on exactly what happened before the transaction with respect to Hebei Tire and what role the GOC played in this transaction, and all of its elements. As such, the Department intends, following this preliminary determination, to issue additional questionnaires to provide Starbright and the GOC an additional opportunity to provide that information. We intend to issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

Loan Benchmarks

Summary: The Department is investigating loans received by respondents from Chinese banks, including state-owned commercial banks (SOCBs), which are alleged to have been granted on a preferential, non-commercial basis. Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(2)(i). However, the Department does not treat loans from government banks as commercial if they were provided pursuant to a government program. *See* 19 CFR 351.505(a)(2)(ii). Because the loans provided to the respondents by SOCBs are under the Government Policy Lending program, as explained below, these loans are the very loans for which we require a suitable benchmark. Additionally, if respondents received any loans from foreign banks, these would be unsuitable for use as benchmarks because, as explained in detail in *CFS Final*, the GOC's intervention in the banking sector creates significant distortions, restricting and influencing even foreign banks within the PRC. *See CFS Final* at Comments 8 and 10.

If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii). However, the Chinese national interest rates are not reliable as benchmarks for these loans because of the pervasiveness of the GOC's intervention in the banking sector. Loans provided by Chinese banks reflect significant government intervention and do not reflect the rates that would be found in a functioning market. *See CFS Final* at Comment 10.

The statute directs that the benefit is normally measured by comparison to a ''loan that the recipient could actually obtain on the market.'' *See* section

771(5)(E)(ii) of the Act. Thus, the benchmark should be a market-based benchmark, yet, there is not a functioning market for loans within the PRC. Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting a market-based benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita gross income (GNI) to the PRC, using the same regression-based methodology that we employed in *CFS Final*. *See CFS Final* at Comment 10.

The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber*, the Department used U.S. timber prices to measure the benefit for government provided timber in Canada. *See Final Results of the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying *Issues and Decision Memorandum*, 34 (*Softwood Lumber*). In the current proceeding, the Department preliminarily finds that the GOC's predominant role in the banking sector results in significant distortions that render the lending rates in the PRC unsuitable as market benchmarks. Therefore, as in *Softwood Lumber*, where domestic prices are not reliable, we have resorted to prices outside the PRC.

Discussion: In our analysis of the PRC as a non-market economy in the antidumping duty investigation of *Certain Lined Paper Products from the PRC*, the Department found that the PRC's banking sector does not operate on a commercial basis and is subject to significant distortions, primarily arising out of the continued dominant role of the government in the sector. *See* ''The People's Republic of China (PRC) Status as a Non-Market Economy,'' May 15, 2006 (*May 15 Memorandum*); and ''China's Status as a Non-Market Economy,'' August 30, 2006 (*August 30 Memorandum*), both of which are referenced in the *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and as placed on the record of this investigation in a memorandum to the file titled ''*Loan Benchmark Information*'' (December 7, 2007) (*Loan Benchmark Information Memorandum*) on file in the Department's CRU. This finding was further elaborated in *CFS Final*. *See CFS Final* at Comment 10. In that case, the Department found that the GOC still dominates the domestic Chinese banking sector and prevents banks from operating on a fully commercial basis. We continue to find that these distortions are present in the PRC banking sector and, therefore, preliminarily determine that the interest rates of the domestic Chinese banking sector do not provide a suitable basis for benchmarking the loans provided to respondents in this proceeding.

Moreover, while foreign-owned banks do operate in the PRC, they are subject to the same restrictions as the SOCBs. Further, their share of assets and lending is negligible compared with the SOCBs. Therefore, as discussed in greater detail in *CFS Final*, because of the market-distorting effects of the GOC in the PRC banking sector, foreign bank lending does not provide a suitable benchmark. *See CFS Final* at Comment 10.

We now turn to the issue of choosing an external benchmark. Selecting an appropriate external interest rate benchmark is particularly important in this case because, unlike prices for certain commodities and traded goods, lending rates vary significantly across the world. Nevertheless, as discussed in *CFS Final*, there is a broad inverse relationship between income levels and lending rates. In other words, countries with lower per capita GNI tend to have higher interest rates than countries with higher per capita GNI, a fact demonstrated by the lending rates across countries reported in *International Financial Statistics* (IFS). *See www.imfstatistics.org*, placed on the record of this investigation in *Loan Benchmark Information Memorandum*. The Department has therefore preliminarily determined that it is appropriate to compute a benchmark interest rate based on the inflation-adjusted interest rates of countries with similar per capita GNI to the PRC, using the same regression-based methodology that we employed in *CFS Final*. As explained in *CFS Final* at Comment 10, this pool of countries captures the broad inverse relationship between income and interest rates. We determined which countries are similar to the PRC in terms of per capita GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. *See www.worldbank.org*, search engine term ''lower middle income,'' placed on the record of this investigation in *Loan Benchmark Information Memorandum*.

Many of these countries reported short-term lending and inflation rates to IFS. With the exceptions noted below, we used this data set to develop an inflation-adjusted market benchmark lending rate for short-term RMB loans. *See http://www.imfstatistics.org*, placed on the record of this investigation in *Loan Benchmark Information Memorandum*. We did not include those economies that the Department considered to be non-market economies for AD purposes for any part of 2006: the PRC, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan, and Ukraine. The benchmark necessarily also excludes any economy that did not report lending and inflation rates to IFS for 2005 or 2006. Finally, the Department also excluded three aberrational countries: Angola, with an inflation-adjusted 2005 rate of 44.72 percent; the Dominican Republic, with an inflation-adjusted 2004 rate of -18.83 percent; and Samoa, with an inflation-adjusted 2004 rate of -5.11 percent. As also discussed in *CFS Final*, this regression provides the most suitable market-based benchmark to measure the benefit from the Government Policy Lending program, because it takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to state-imposed distortions in the banking sector discussed above. *See www.worldbank.org/wbi/governance*, placed on the record of this investigation in *Loan Benchmark Information Memorandum*. Consistent with the regression model employed in *CFS Final*, the Department calculated an inflation-adjusted benchmark rate of 7.42 percent for 2006, 8.76 percent for 2005, 8.53 percent for 2004, and 9.96 percent for 2003. Because these are inflation-adjusted benchmarks, it is also necessary to adjust the interest paid by respondents on its RMB loans for inflation. This was done using the PRC inflation figure as reported to IFS. *See http://www.imfstatistics.org*, placed on the record of this investigation in *Loan Benchmark Information Memorandum*. The Department then compared its benchmarks with respondents' inflation-adjusted interest rate to determine whether a benefit existed for the loans received by respondents on which principal was outstanding or interest was paid during the POI.

The lending rates reported in IFS represent short-term lending, and there is not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To identify and measure any benefit from long-term loans, the Department developed a ratio of short-term and long-term lending. The

Department then applied this ratio to the benchmark short-term lending figure (discussed above) to impute a long-term lending rate. Specifically, the Department computed a ratio of the average one-year and five-year interest rates on interest rate swaps reported by the Federal Reserve for 2005. That is, if the long-term swap rate were 25 percent higher than the short-term swap rate, the Department would inflate the average short-term lending rate by 25 percent to arrive at a long-term interest rate benchmark. This methodology is appropriate because the ratio between short-term and long-term interest rate swap rates offers an estimate of the market consensus premium that borrowers would pay on a long-term loan over a short-term loan. *See CFS Final* at Comment 11.

Benchmarks for Foreign Currency-Denominated Loans: For foreign currency-denominated loans, the Department was unable to locate sufficient data on short-term lending rates for the countries in the basket of ''lower middle-income countries'' used for its benchmark for RMB loans. As a result, for purposes of this preliminary determination, to determine the benefit from countervailable foreign currency-denominated loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. Bloomberg provides data on average corporate bond rates for companies with a range from A-rated to B-rated. *See* Bloomberg data, placed on the record of this investigation in *Loan Benchmark Information Memorandum*. For this preliminary determination, we have determined that BB-rated bonds, which are the highest non-investment-grade and near the middle of the overall range, are the most appropriate basis for calculating the spread over LIBOR. Several of the countries in the basket report bond rates, but not all of these countries report corporate bond rates and none report corporate bond rates for firms in the industrial sector. The Department therefore relied on corporate bond rates for the industrial sector in the United States and the eurozone, because the market for dollars and euros is international in scope.

On November 9, 2007, petitioners filed comments on the calculation of the loan benchmark. They suggested two changes to the methodology. First, they argue that the use of a GDP deflator would be a more appropriate adjustment for inflation than the use of the CPI. Second, they argue that there is more appropriate information than the ratio between one- and five-year interest rate swap rates to use in converting short-term interest rates to long-term interest rates. For purposes of this preliminary determination, we have decided not to make any adjustments to our benchmark rate methodology; however, we invite interested parties to comment on these proposals and will consider all comments on the benchmark in our final determination.

SOE Status of Guizhou Tire and TUTRIC

Guizhou Tire has repeatedly noted what it perceives as the Department's failure to provide a definition of an SOE, implying that its SOE status is in doubt. However, as it states on page 5 of its October 15 questionnaire response, 33.39 percent of its total shares outstanding are ''state-owned.'' Not only are 33.39 percent of its shares state-owned by Guiyang State Asset Investment Management Company (GAMC), but the next largest shareholder owns only one percent. Thus, no other shareholder is in a position to challenge GAMC's dominance. In addition, public information indicates GAMC's self-described purpose is to play the role of an owner of SOEs. *See* November 28 Bridgestone comments, Exhibit 6. Finally, we note Guizhou Tire received benefits under the State Key Technologies Renovation Project Fund. According to the GOC, only SOEs were eligible for this program. *See* September 24, 2007 GOC questionnaire response in the CVD investigation of laminated woven sacks, page 29 (''only state-owned enterprises and state-holding enterprises are eligible for this program''), a public version of which has been placed on the record of this investigation. Thus, the GOC considers Guizhou Tire to be an SOE. With regard to TUTRIC, based on the information on the record, the Department is treating TUTRIC as both an SOE and FIE. *See*, *e.g.*, October 15 TUTRIC questionnaire response, page 9.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Government Policy Lending

We initiated an investigation of policy loans[17] to the tire industry based on references in the current (*i.e.*, the eleventh) five-year plan of Guiyang municipality to a radial tire project for Guizhou Tire, and references to the auto parts and tire industries in the five-year plans, and similar or related planning documents (*e.g.*, ''catalogues'' of industries designated for development), of Hebei Province, Tianjin, and the central government. In response to our questionnaires, additional information was placed on the record of this investigation by the GOC and Guizhou Tire indicating that the tire industry has been targeted by the GOC, provincial, and/or municipal governments for preferential lending.

Of particular importance, this information indicates the targeting of tire producers by the provinces and certain municipalities relevant to this investigation: Guizhou, Hebei, and Tianjin. As the GOC has explained, provincial and municipality goals and objectives are in conformity with the central policy goals and objectives. Specifically, the central-level plans set goals regarding macroeconomic policies and ''provide a vision for economic development, market and regulatory activities, social administration, and the provision of public services.'' *See* October 29 GOC questionnaire response, pages 13 and 19. The GOC explained that the provincial and municipal five-year plans are drafted based on the goals and objectives of the central-level plans. *Id.* at 21–22. In other words, local governments (*i.e.*, provinces and municipalities) must align their policies with stated central government policies and carry out those polices to the extent that such measures affect their locality. As such, central-level plans should be considered a central government policy or program that local governments adopt and implement through their own five-year plans. *See*, *also*, *CFS Amended Preliminary*, 72 FR at 17492.

For example, the tenth Guizhou five-year plan (2001–2005) provided by the GOC singled out Guizhou Tire for technology renovation for two meridian (*i.e.*, radial) tire lines (OTR tires can be radial tires, as well as ''bias ply'' tires). *See* October 29 GOC questionnaire response, Exhibit GOC–NEW–4–6. The tenth five-year plan also states that ''policy bank loans and loans from abroad should continue to be allocated according to the plans.'' *Id.* In addition, business proprietary information provided in Guizhou Tire's supplemental response indicates Guizhou Tire's importance in earlier five-year plans. *See* Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Nicholas Czajkowski, Case Analyst,

[17] The Department initiated on Policy Lending to the Chinese Tire Industry and Preferential Loans to SOEs.

''Calculation Memorandum for Guizhou Tire'' (December 7, 2007) (*Guizhou Tire Calculation Memorandum*).

Regarding Hebei Province, the *Hebei Province Science and Technology 11th Five-year Plan & 2020 Long-Term Target*, lists automobile parts and the rubber industry as ''key projects,'' and the *Guidelines for the Implementation of Hebei Province Science and Technology 11th Five-year Plan* directs commercial banks to support ''key projects.'' *See* Bridgestone's September 19 new subsidy allegations, Exhibits 18 and 17, respectively. The ninth Hebei five-year plan also mentions that the ''automobile and components'' industry will, among other industries, be ''developed greatly and stronger,'' *see* October 29 GOC questionnaire response, Exhibit GOC–NEW–4–8, and the tenth five-year plan states that ''auto parts,'' among other industries, ''shall be supported,'' id. at Exhibit GOC–NEW–4–9.

Regarding Tianjin, the eleventh five-year plan states that the ''fine chemical industry {of} tyre . . . will be actively developed,'' among other industries. *Id.* at Exhibit GOC–NEW–4–11. Moreover, the *Tianjin Municipal Directory Catalogue for the Priority Development of High- and New Tech Industries*, published in 2002, which claims that its purpose is to ''guide social funds,'' states, at paragraph 67, that ''the recent industrialization focuses include: Manufacturing Equipment for heavy-duty, light truck and car radial tires.'' *See* Bridgestone's September 5 New Subsidy Allegations at Exhibit 38. The Department noted in our investigation of CFS from the PRC that the NDRC equates ''social funds'' with loans, among other things. *See* Memorandum to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, from Lawrence Norton, Senior International Economist, ''Government of the People's Republic of China Verification Report: Policy Lending'' (August 20, 2007), a public version of which has been placed on the record of this investigation.

Therefore, the Department preliminarily determines that the loans received by all three respondents and their cross-owned affiliates from SOCBs were made pursuant to a GOC policy to provide loans to the tire industry. The record indicates Guizhou Tire has been a key target for economic development by Guizhou province and Guiyang municipality since at least the eighth five-year plan. Furthermore, according to the translated excerpts provided by the GOC, the number of such specifically targeted enterprises is limited. For example, the GOC translated section 6 of the tenth Guizhou five-year plan, ''Traditional industry shall be improved through high technology.'' This section mentions only three other companies besides Guizhou Tire. In addition to making clear the importance of Guizhou Tire in the economic development of the province, the plan also is clear that loans are one means of development. Furthermore, the tenth Guizhou plan states explicitly, as noted above, the general directive that ''policy loans'' should be allocated according to the plans.

In contrast to the Guizhou province and Guiyang municipalities plans, the plans for Hebei Province and Tianjin do not mention, insofar as the GOC provided translations, particular enterprises or particular projects. They do, however, refer to particular industries targeted for development. As discussed above, Hebei Province refers to the auto parts and rubber industries,[18] and Tianjin refers to the tire industry (and, at least in one case, to heavy duty tires). Also as discussed above, each of these provinces provides direction in documents implementing their five-year plans for the use of loans to ''guide'' and ''assist'' targeted industries.

Thus, for the reasons discussed above, we preliminarily determine that this loan program is *de jure* specific pursuant to section 771(5A)(D)(i) of the Act. We also determine the program provides direct financial contributions by the GOC (*i.e.*, government policy banks and SOCBs) pursuant to section 771(5)(D)(i) the Act. *See CFS Final* at Comment 8. Finally, this program provides benefits to the recipients equal to the difference between what the recipients paid on loans from government-owned banks and the amount they would have paid on comparable commercial loans, pursuant to section 771(5)(E)(ii) of the Act.

Two of the respondents, as well as their cross-owned affiliates, report long-term loans from state-owned banks outstanding during the POI. Except for TUTRIC and DCB, the reported loans were all disbursed after December 11, 2001, the date the Department has preliminarily determined to be the date from which the Department will identify and measure subsidies in the PRC. TUTRIC's and DCB's long-term loans ''date back to the 1980s and 1990s,'' before December 11, 2001. It is apparent, however, that the original terms and conditions of these loans have altered over time. Based on the Department's analysis of the information provided by TUTRIC and the GOC, we preliminarily determine that TUTRIC's treatment of these loans, and the GOC's ongoing acceptance of this treatment, has created new and recurring subsidies conferring benefits since 2001 and during the POI. Most of the details about these loans are business proprietary; for a more complete discussion see Memorandum to Thomas Gilgunn, Program Manager, AD/CVD Operations, Office 6, from Jack Zhao, Case Analyst, ''Calculation Analysis for TUTRIC'' (December 7, 2007) (*TUTRIC Calculation Memorandum*). For purposes of this preliminary determination, we are treating these as new loans received during the POI. We intend to continue seeking additional documentation regarding these loans which we will consider for the final determination. In addition to these long-term loans, two of the respondents and their cross-owned affiliates had short-term loans, disbursed in 2005 and 2006 with balances outstanding during the POI.

To calculate the benefit, for all companies including TUTRIC, we used the interest rates described in the ''Loan Benchmark'' section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit to each company by the appropriate sales denominator to calculate subsidy rates of 1.49, 0.45, 3.40 percent *ad valorem* for Guizhou Tire, Starbright, and TUTRIC, respectively.

B. Provision of Land for Less Than Adequate Remuneration to SOEs

Petitioners allege that the GOC offers free land to SOEs in key strategic sectors. Petitioners also note that the Department concluded in the *August 30 Memorandum* (referred to above in our discussion of loan benchmarking) that SOEs own a significant amount of land-use rights that they receive free of charge. As explained above, both Guizhou Tire and TUTRIC are SOEs.

Petitioners also allege that the GOC has a policy of providing land-use rights to certain FIEs on a preferential basis. According to petitioners, FIEs that are either product export enterprises or technologically advanced enterprises are entitled to caps on the land-use fees that can be charged to them, and in some cases are exempt from such fees altogether.

Guizhou Tire and its cross-owned affiliates (throughout this section

[18] The radial tire project discussed in the Guiyang municipality plan is discussed within the context of identifying automobile parts as a key industry. *See* the Bridgestone October 1 submission. Thus, given the parallels among the central and provincial five-year plans, it appears the GOC and provincial and municipal governments consider radial tires, which include OTR tires, to be part of the automobile parts industry.

collectively referred to as Guizhou Tire) reported details concerning three tracts of land used in the production and sale of subject merchandise. Among many other questions the Department asked concerning these three tracts of land, we asked whether the relevant land-use rights are considered either granted land-use rights or allocated land-use rights. *See* November 27 Guizhou Tire supplemental questionnaire response, page 29. Guizhou Tire did not answer this question. Based on the information the Department has collected in other cases concerning PRC land-use rights (*e.g.*, the *August 30 Memorandum*), answers given in response to this question by the two other respondents, and the business-proprietary details given by Guizhou Tire regarding its three land-use agreements, we conclude that Guizhou Tire was likely provided with allocated land-use rights for one of its three tracts (''tract number 3''). Business proprietary information also indicates that these rights were essentially conferred after December 11, 2001. *See* Memorandum to Thomas Gilgunn, Program Manager, Office of AD/CVD Enforcement 6, from Mark Hoadley, Case Analyst, ''Analysis of Land-Use Rights for OTR Tires Respondents,'' December 7, 2007 (*Land Analysis Memorandum*).

As discussed in the *LWS Preliminary*, there are two main types of land-use rights in China: ''granted'' (sometimes referred to as ''conveyed'') and ''allocated.'' The GOC transfers allocated land-use rights to state entities for a nominal one-time charge and annual fee. These allocated land-use rights do not expire, may not be leased or mortgaged, and can be transferred (or shared for commercial purposes) legally only if they are first converted to granted land-use rights, *i.e.*, those rights transferred to private entities as described below. *See August 30 Memorandum* at 43, citing to Ho, Samuel P.S., and Lin, George C.S., ''Emerging Land Markets in Rural and Urban China: Policies and Practices'' (The China Quarterly, 2003), 687–8, stating that ''(a)llocation is used to dispense land use right to state-owned or non profit users without time limits and conveyance is used to transfer land-use rights to commercial users for a fixed period . . . state units are able to obtain land use rights at costs that are much lower than those paid by commercial users and with no time limit.'' Allocated land-use rights are substantially different from granted land-use rights, which were the type of land-use rights at issue in the *LWS Preliminary*. Granted land-use rights can be purchased by private entities directly from the government on the ''primary market'' or from other granted land-use rights holders on the ''secondary'' market. Granted land-use rights can be transferred or mortgaged and require a large up-front fee, but carry no annual fees aside from taxes. *See August 30 Memorandum* at 43–44. Therefore, the information on the record indicates that allocated land-use rights, which can only be transferred to state entities and which are subject to significantly different terms than granted land-use rights, are specific to SOEs pursuant to section 771(5A)(D)(i) of the Act.

Accordingly, the Department preliminarily determines that certain land-use rights of Guizhou Tire, provided after December 11, 2001, are countervailable. The allocated land rights provided to Guizhou Tire are available only to SOEs and thus are specific under section 771(5A)(D)(i) of the Act. We further determine that the GOC's provision of land rights is a financial contribution within the meaning of section 771(5)(D)(iii).

Finally, the Department has determined that the provision of these rights provided a benefit pursuant to 19 CFR 351.511(a). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) of the Act further states that ''the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale.'' Section 351.511(a)(2) of the Department's regulations sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

The Department Cannot Apply a First Tier Benchmark

As a general matter, the most direct means of determining whether a government obtained adequate remuneration is normally through a comparison with private transactions for a comparable good or service, in this case, the sale of land-use rights, in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country, or outside the country (the latter transaction would be in the form of an import, and therefore not applicable to provision of land-use rights). This is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation. However, a particular problem can arise in applying this standard when the government is the sole supplier of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Moreover, a first tier benchmark is not appropriate where the government accounts for a significant or overwhelming portion of the sales of the good in question or where the government's presence in the market is likely to have produced significant distortions in the price formation of the good. *See Countervailing Duties, Final Rule, Preamble*, 63 FR 65347, 65378 (November 25, 1998) (''Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy''). In such cases, the ''commercial environment of the purchaser'' is distorted by the overwhelming presence of the government and cannot give rise to a price that is sufficiently free from the effects of government actions. The use of such an internal benchmark would be akin to comparing the benchmark to itself, *i.e.*, such a benchmark would reflect the distortions of the government presence. *See Softwood Lumber*, 67 FR 15545 and accompanying Issues and Decision Memorandum, at 34.

In our analysis of the PRC as a non-market economy in the recent investigation of *Certain Lined Paper Products from the PRC*, we found that real property rights in China remain poorly defined and weakly enforced, with a great divergence between *de jure* reforms and *de facto* implementation of these reforms. *See August 30 Memorandum* at 46. In arriving at this conclusion, the Department also

discussed the extent of government involvement in the PRC land market. This was also the focus of our preliminary determination with regard to a benchmark for land-use rights provided for less than adequate remuneration in the *LWS Preliminary*. In that case, we noted that the government, either at the national or local level, is the ultimate owner of all land in China, and we examined whether the GOC exercises control over the supply side of the land market in China as a whole so as to distort prices in the primary and secondary markets. We preliminarily determined that, given the pervasive intervention of the GOC in the land market in China, the Department cannot rely on prices, private or otherwise, from this market for purposes of a first tier benchmark. *See LWS Preliminary*. Given this recent preliminary determination that covers the same POI as this proceeding and on the basis of the evidence on this record, we continue to find in this proceeding that there are no usable first tier in-country benchmarks to measure the benefit from the transfer of land-use rights during the POI. Our preliminary determination with respect to internal prices for industrial land-use rights necessarily reflects the evidence on the record at this time. We will carefully review and consider all additional information timely submitted on the record during the course of this proceeding regarding the primary and secondary markets, including auctions, tenders and listings, as well as agricultural land conversions and other land assessment, pricing and transfer procedures.

The Department Cannot Apply a Second Tier Benchmark

The second tier benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. *See* 19 CFR 351(a)(2)(iii). In selecting a world market price under this second approach, the Department will examine the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the Preamble, the Department will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. *See Preamble*, 63 FR at 65378. As with the use of import prices discussed above under the first tier benchmark analysis and as discussed in the *LWS Preliminary*, we preliminarily conclude that land, an in situ property, does not lend itself to be considered under this tier.

The Department Is Using a Benchmark from Outside China

Since we are not able to conduct our analysis under the second tier of the regulations, consistent with the hierarchy, we next consider whether the government pricing of land-use rights is consistent with market principles. This approach is also set forth in section 351.511(a)(2)(iii) of the Department's regulations and is explained further in the Preamble:

> {W}here the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. In our experience, these types of analysis may be necessary for such goods or services as electricity, land leases or water, and the circumstances of each may vary widely.

See Preamble, 63 FR at 65378. The regulations do not specify how the Department is to conduct such a market principle analysis. By its very nature, this analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis. Consistent with the *LWS Preliminary*, we preliminarily determine in the instant case that due to the weak definitions and protection of property rights, the overwhelming presence of government involvement in the land-use rights market, as well as the documented deviation from the authorized methods of pricing and allocating land, the purchase of land-use rights in China is not conducted in accordance with market principles.

Given this finding, we looked for an appropriate basis to determine the extent to which land-use rights are provided for less than adequate remuneration. Consistent with the *LWS Preliminary*, we have preliminarily determined that this analysis is best achieved by comparing the prices for land-use rights in China with comparable market-based prices in a country at a comparable level of economic development that is in a reasonably proximate region to China. In the *LWS Preliminary*, we concluded that the most appropriate benchmark for respondents' land-use rights was the sales of certain industrial land plots in industrial estates, parks and zones in Thailand. In that recent case, we relied on prices from a real estate market report on Asian industrial property that was prepared outside the context of any Department proceeding by an independent and internationally recognized real estate agency with a long-established presence in Asia. *See* attachments 5, at 3, and 3, at 3, of the *Land Benchmark Memorandum* (collectively, the Asian Industrial Property Reports). In relying on a land benchmark from Thailand, we noted that China and Thailand have similar levels of per capita GNI, namely, $2010 and $2990, respectively; *see* attachment 6 of the *Land Benchmark Memo*, and that population density in China and Thailand are roughly comparable, with 141 persons per square kilometer (k^2) in China and 127/k^2 in Thailand, *id*. at attachment 6. Additionally, we noted that producers consider a number of markets, including Thailand, as an option for diversifying production bases in Asia beyond China. Therefore, the same producers may compare prices across borders when deciding what land to buy. In that case, we cited to a number of sources which named Thailand as an alternative production base to China. *See* Asian Industrial Property Reports; *see*, *also*, ''Japan firms rate Vietnam best alternative to China,'' Nikkei Weekly, April 10, 2006, ''FY2005 Survey of Japanese Firms' International Operations,'' Japan External Trade Organization, March 2006 at 1, and ''JETRO Releases its Latest Survey of Japanese Manufacturers in ASEAN and India.''

Given the recent *LWS Preliminary* that covers the same POI as in this proceeding and on the basis of the evidence on this record, we continue to preliminarily determine that the ''indicative land values'' for land in Thai industrial zones, estates and parks outlined in the Asian Industrial Property Reports present a reasonable and comparable benchmark for the value of the land at issue in this investigation. However, as discussed above, there are two main types of land-use rights in China: ''granted'' and ''allocated.'' Granted land-use rights, which were the types of land-use right at issue in *LWS Preliminary*, require a large up-front fee, but carry no annual fees aside from taxes. Such land-use rights can be transferred or mortgaged, and are akin to an outright purchase of land. In contrast, allocated land-use rights are transferred to state entities, do not expire, may not be leased or mortgaged and are subject to an annual fee. Allocated land-use, therefore, more

closely resembles a lease or rental arrangement than a one-time purchase.

Because the land-use rights at issue in the instant investigation are allocated land-use rights, we looked for an appropriate basis to determine a benchmark for the market-value annual rent on industrial land. As stated above, we continue to find that the ''indicative land values'' outlined in the Asian Industrial Property Reports present a reasonable and comparable benchmark for the value, *i.e.*, an outright purchase price, of the land at issue in this investigation. In order to assess the appropriate *rental value* of such land, we looked for an appropriate ''property yield'' for commercial land in Thailand, *i.e.*, the annual cash flow from rent that a land owner in Thailand should expect to earn. We found that the same source that compiled the Asian Industrial Property Reports, also prepares market reports on ''property yields'' and real estate investment trusts (REITs) in Asia and Thailand. The reported property yields in Thailand range from 3 to 11 percent, and are related to a variety of real estate holdings from housing to factories. However, none is specific to industrial land. *See* Thailand Investment MarketView, Q3 2007 at 3, a public version of which has been placed on the record of this investigation. REITs are trusts that are dedicated to owning and/or operating income-producing real estate. Dividends from REITs are based on the income, often rent, generated from the real estate holdings. REITs in Thailand hold a variety of commercial real estate, including real estate dedicated to industrial production and manufacturing. *Id.* at 2. Although these REITs portfolios also hold non-industrial real estate, we note that there is a wide range of returns and, furthermore, there is nothing on the record to indicate that industrial land would yield a higher or lower income than other types of real estate property in Thailand. We therefore preliminarily determine that the dividend yields from such REITs provide a reasonable basis to estimate property yields for industrial land in Thailand. The average dividend yield of REITs in Thailand in the period contemporaneous with the one-time purchase benchmark established in the LWS preliminary is 7.4 percent, which is also consistent with the spread in property yields discussed above. *See* REITs Around Asia at 2, a public version of which has been placed on the record of this investigation.

In order to calculate an annual rent, we multiplied this annual yield percentage by the up-front purchase price per square foot (psf) established in the *LWS Preliminary* to arrive at an annual psf rental rate. In order to calculate the benefit, we first multiplied the benchmark rental rate (adjusted to the POI) by the total area of the countervailable land. We then made adjustments for fees paid by Guizhou Tire to derive the total POI benefit. We divided the 2006 benefit by the appropriate sales denominator to calculate a subsidy rate of 0.11 percent *ad valorem* for Guizhou Tire.

As discussed above, we have considered certain economic and demographic factors in arriving at this conclusion. However, we also note that other factors may inform this decision, including the availability of data on prices, investment flows, availability of land, and industry density in a certain region. We intend to continue to explore this issue and invite comments from the parties.

While TUTRIC reported that it received granted land-use rights, the details of its narrative and supporting documentation indicate it received the benefits of allocated rights. In particular, it pays a yearly fee not typically associated with granted rights. In fact, according to the *August 30 Memorandum* at 43, granted rights ''require a large up-front fee but carry no annual fees aside from taxes.'' According to TUTRIC's November 27 supplemental response (bottom of page 17), the annual fee paid by TUTRIC is not a tax, but a ''price'' which is periodically changed by the local administration (*e.g.*, according to TUTRIC, the land authority increased the price in 2007). It also states in Exhibit 11 of its October 15 questionnaire response that it records its yearly fee in its financial records as ''land-use fees.'' While TUTRIC also reported paying an up-front fee in the mid-1980s, which is not inconsistent with either allocated or granted rights, the business proprietary breakdown of this fee indicates it might be more accurately characterized as an ''expropriation'' fee (as TUTRIC explains in its November 27 supplemental response, its land was originally farm land, which the city agreed to ''zone'' for industrial use on TUTRIC's behalf). *See Land Analysis Memorandum*.

DCB also acquired land-use rights fitting the description of allocated rights (DCB did not state whether its rights were allocated or granted). According to DCB, its land was originally provided free of charge, but today it pays an annual fee. Moreover, the business proprietary details of the land-use documents provided in Exhibit 14 of its November 27 questionnaire response closely fit the description given in the *August 30 Memorandum* of allocated rights. *See Land Analysis Memorandum*.

While Starbright is not an SOE, its response indicates that it may have been awarded allocated land. These land transactions appear to be part of Starbright's 2006 CIO. We also note that business proprietary information indicates local authorities may have based their approval of Hebei Tire's asset sale in part on the export performance of Starbright. *See Land Analysis Memorandum*.

The Department preliminarily determines that additional information is needed to evaluate the land-use rights of both TUTRIC and Starbright. Specifically, for TUTRIC and DCB, further information is required regarding the details of their transactions (for example, TUTRIC provided summaries of several land-use documents, instead of the documents themselves). For Starbright, as discussed in the ''Change in Ownership'' section above, further information is required regarding Hebei Tire and its asset sale to Starbright. We intend to issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

C. Tax Subsidies to FIEs in Specially Designated Geographic Areas

Petitioners allege that FIEs located in special designated locations (*e.g.*, new-technology and high-technology zones, special economic zones, and economic and technological development zones) pay income tax at reduced rates. Under this program, such zones have reduced income tax rates for FIEs (*e.g.*, from 30 to 24 percent) pursuant to Article 7 of the FIE Tax Law. According to the GOC, for FIEs established in a coastal economic development zone, a special economic zone, or an economic technology development zone, the applicable corporate income tax rate is 15 percent or 24 percent, depending on the zone.

The GOC reports on page 46 of its October 15 questionnaire response that TUTRIC is located in a coastal economic development zone, and the applicable tax rate for TUTRIC during the POI was 24 percent. TUTRIC's 2006 tax return shows that the income tax rate was reduced from 30 percent to 24 percent. TUTRIC's parent company, as well as Guizhou Tire and its cross-owned affiliates, reported that they did not use this program. Starbright is an FIE, but did not benefit under this program during the POI. The 2005 income tax

returns (filed in 2006) submitted by these companies confirm that these companies did not claim a lower tax rate during the POI.

We preliminarily determine that the exemption or reduction in the income tax paid by FIEs in specially designated geographic areas under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. The Department also found this program to be countervailable in the CFS and LWS investigations. *See CFS Amended Preliminary*, 72 FR at 17494 (and confirmed in *CFS Final*, 72 FR 60645), and *LWS Preliminary*, 72 FR 67893.

To calculate the benefit from this program to TUTRIC, we treated the income tax exemption claimed by TUTRIC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that would have been paid by TUTRIC otherwise (24 versus 30 percent) and multiplied the difference by TUTRIC's taxable income. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the total sales of TUTRIC. Additional information on this calculation is provided in the calculation analysis memorandum for TUTRIC. *See TUTRIC Calculation Memorandum*. On this basis, we preliminarily determine a countervailable subsidy of 0.13 percent *ad valorem* for TUTRIC for this program.

D. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs

Petitioners allege that pursuant to Article 9 of the FIE Tax Law and Article 71 of Decree 85 of the Council of 1991, local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are allowed to FIEs by the national Two Free, Three Half program.

In its questionnaire response, TUTRIC stated it received benefits under this program and its tax return filed during the POI confirms it benefitted from this program. In addition, the GOC reports on page 75 of its October 15 questionnaire response that TUTRIC participated in this program during the POI. TUTRIC's parent company, as well as Guizhou Tire and its cross-owned affiliates, reported that they did not use this program. Starbright is an FIE, but did not claim a benefit under the program on the tax return it filed in 2006. The income tax returns submitted by these companies confirm they did not benefit from this program.

We preliminarily determine that the exemption or reduction in the local income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in the CFS and LWS investigations. *See CFS Amended Preliminary*, 72 FR at 17494 (and confirmed in the *CFS Final*, 72 FR 60645), and *LWS Preliminary*, 72 FR at 67893.

To calculate the benefit from this program to TUTRIC, we treated the income tax exemption claimed by TUTRIC as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that would have been paid by TUTRIC otherwise (the standard local rate is 3 percent) and multiplied the difference by TUTRIC's taxable income. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the total sales of TUTRIC. Additional information on this calculation is provided in the calculation analysis memorandum for TUTRIC. *See TUTRIC Calculation Memorandum*. On this basis, we preliminarily determine a countervailable subsidy of 0.06 percent *ad valorem* for TUTRIC.

E. VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Petitioners allege that the *State Councils's Circular on Adjusting Tax Policies on Imported Equipment* (Guofa No. 37) (*Circular No. 37*) exempts both FIEs and certain domestic enterprises from paying import tariffs and VAT on imported equipment provided that these goods are not for resale. Enacted in 1997, *Circular No. 37* exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in their production. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Domestic industries may be exempted from tariffs and VAT on certain imported equipment as long as the equipment being imported does not fall under the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Domestic Invested Projects*. FIEs may be exempted from tariffs and VAT of certain imported equipment as long as the equipment being imported does not fall under the *Directory of Imported Commodities of Non-Tax Exemption to be Used in Foreign Invested Projects*.

Both Guizhou Tire and TUTRIC reported in their October 15 questionnaire responses that they applied for, and received, VAT and tariff exemptions for imports of equipment during the POI. Guizhou Tire reported that it was entitled to these exemptions because of its status as an ''encouraged project'' (*i.e.*, a domestic enterprise that engaged in activities listed in the *Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State*) and because it imported equipment during the POI which was not listed in the *Directory of Imported Commodities of Non-tax Exemption to be Used in Domestic Invested Projects*. TUTRIC reported that it was entitled to these exemptions because of its status as an FIE which imported equipment during the POI which did not fall into the *Directory of Imported Commodities of Non-tax Exemption to be Used in Foreign Invested Projects*.

We preliminarily determine that the exemptions on VAT and tariffs on purchases of imported equipment during the POI confer a countervailable subsidy. These exemptions provide a financial contribution in the form of revenue forgone by the GOC. They provide a benefit to the recipients in the amount of the VAT and tariffs saved. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). As described above, certain domestic enterprises are eligible to receive VAT and tariff

exemptions under this program as well as FIEs. Based on the information provided by the GOC, it does not appear that the addition of these domestic enterprises broadens the reach or variety of users sufficiently to render the program non-specific. *See CFS Final* at Comment 16, discussing and affirming the preliminary determination that this program is specific under section 771(5A)(D)(iii)(I) of the Act despite the fact that the ''pool of companies eligible for benefits is larger than FIEs.'' For example, to be eligible, Guizhou Tire (not a FIE) had to qualify as an ''encouraged project'' (*i.e.*, a domestic enterprise that engaged in activities listed in the Catalogue of Key Industries, Products and Technologies the Development of Which is Encouraged by the State). Therefore, we preliminarily find the VAT and tariff exemptions to be specific under section 771(5A)(D)(iii)(I) of the Act.

Since these VAT and tariff exemptions were for the purchase of capital equipment, we are treating these exemptions as non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii). *See*, *also*, LWS Preliminary (countervailing a rebate for the purchase of capital equipment as a non-recurring benefit under a similar VAT program). Guizhou Tire and TUTRIC reported that they received these exemptions during the POI. To determine the benefit, we first conducted the ''0.5 percent test.'' *See* 19 CFR 351.524(b)(2). We summed the VAT and tariff exemptions Guizhou Tire and TUTRIC received and divided that sum by each company's sales during the POI in accordance with the attribution rules described in 19 CFR 351.525(b)(6). As a result, we found that the benefits were less than 0.5 percent of relevant sales during the POI for both Guizhou Tire and TUTRIC. Thus, Guizhou Tire's and TUTRIC's VAT and tariff exemptions should be allocated to the year of receipt (*i.e.*, 2006, the POI). On this basis, we preliminarily determine a countervailable subsidy of 0.03 and 0.17 percent *ad valorem* for Guizhou Tire and TUTRIC, respectively.

F. The State Key Technologies Renovation Project Fund

Petitioners state that the State Key Technology Renovation Project Fund (Key Technology Program) was created pursuant to state circular Guojingmaotouzi No. 886 (*Circular No. 886*) in 1999 to promote technologies in targeted sectors, and operates under the regulatory guidelines provided in the circular. The circular was issued by the former State Economic and Trade Commission (SETC), the former State Planning Commission (SPC), the Ministry of Finance (MOF) and the People's Bank of China (PBC). The purpose of this program is to promote: 1) technological renovation in key industries, key enterprises, and key products; 2) facilitation of technology upgrade; 3) improvement of product structure; 4) improvement of quality; 5) promotion of domestic production; 6) increase of supply; 7) expansion of domestic demand; and 8) promotion of continuous and healthy development of the state economy.

Under the Key Technology Program, companies can apply for funds to cover the cost of financing specific technological renovation projects. Pursuant to Article 4 of *Circular No. 886*, the recipients of these funds will mainly be selected from large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries. To be considered for funding, the enterprise files an application that is reviewed at various levels of government, with final approval given by the State Council.

The GOC has further reported that the Key Technology Program has not operated since 2003, although the implementing regulations remain in effect. This is due to institutional reform in the government. The implementing agency, the SETC, was dissolved and the program was not taken over by another agency. The GOC and Guizhou Tire have reported that Guizhou Tire received benefits under the Key Technology Program to assist in Guizhou Tire's development of a production line before the program ceased operation in 2003. This production line was involved in the production of both subject and non-subject merchandise.

We preliminarily determine that the Key Technology Program provides countervailable subsidies to Guizhou Tire within the meaning of section 771(5) of the Act. Guizhou Tire notes that only a certain portion of the merchandise produced from the production line was subject merchandise. However, Guizhou Tire has provided insufficient evidence to demonstrate that these subsidies were tied to non-subject merchandise, pursuant to19 CFR 351.525(b)(5). *See Guizhou Tire Calculation Memorandum* for details. We find that these grants are a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). We further preliminarily determine that the grants provided under this program are limited as a matter of law to certain enterprises, *i.e.*, large-sized state-owned enterprises and large-sized state holding enterprises among the 512 key enterprises, 120 pilot enterprise groups and the leading enterprises in industries, and, hence, are specific under section 771(5A)(D)(i) of the Act.

According to the GOC, the program supports state key technological renovation projects through project investment or loan interest grants. Therefore, consistent with 19 CFR 351.524(c)(1), we are treating the grants received under this program as ''non-recurring.'' To measure the benefits of each grant that are allocable to the POI, we first conducted the ''0.5 percent test'' for each grant. *See* 19 CFR 351.524(b)(2). We divided the total amounts approved in each year by the relevant sales for those years. As a result, we found that a grant provided in one year was greater than 0.5 percent of relevant sales and was properly allocated over the AUL.

To calculate the countervailable subsidy rate, we divided the benefits attributable to the POI by the total value of Guizhou Tire's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy rate to be 0.12 percent *ad valorem* for Guizhou Tire.

G. Provision of Natural and Synthetic Rubber by SOEs for Less than Adequate Remuneration

Bridgestone alleges that the GOC, through state-owned rubber producers, provides domestic tire producers with natural and synthetic rubber at prices that do not reflect adequate remuneration. In its questionnaire response, the GOC states that the production and purchase price of both natural and synthetic rubber in the PRC are driven by market forces. *See* October 29 GOC questionnaire response at 11. The GOC also states that it does not regulate the price of rubber products, nor does it interfere with the decision making or day-to-day operations of natural and synthetic rubber producers or consumers. *Id.* The GOC reported that the users of rubber in the PRC included the following industries: tires; rubber bands and tubes; shoes; machinery components; and commodity products. The GOC claims not to be aware of any particular industries that receive preferential prices for rubber. In our initial new subsidy allegation questionnaire, we asked the GOC to explain the nature of its relationship with rubber suppliers and to state whether they are owned by the government. The GOC did not answer our question regarding state ownership of rubber suppliers. *Id.* at 10. In our

supplemental questionnaire dated November 14, 2007, we asked the GOC to provide a complete list of producers and sellers of rubber in China and to indicate the state's ownership interest in each producer. The GOC did not provide a complete list of rubber producers and sellers and did not indicate the state's ownership interest in any producer. *See* November 27 GOC supplemental questionnaire response at 30.

All three respondents reported purchases of natural and synthetic rubber during the POI, and provided a breakdown of purchases from each supplier. Although the Department requested respondents to identify which suppliers were SOEs, Guizhou Tire did not provide this information. Instead, Guizhou Tire stated that the Department had not defined the term SOE in its questionnaires and that it is unable to ''discern accurately all of the shareholders of its rubber suppliers.'' *See* October 29 Guizhou Tire questionnaire response at 8; *see*, *also*, November 27 Guizhou Tire supplemental questionnaire response at 42.

Based on the record evidence, we preliminarily determine that the provision of natural and synthetic rubber by SOEs to OTR tire producers in the PRC is countervailable. In its response, the GOC listed the industries that use natural and synthetic rubbers: ''tires, rubber bands and tubes, shoes, machinery components and commodity products.'' *See* October 29 GOC questionnaire response at 10. We preliminarily find that these industries are ''limited in number'' and, hence, that the provision of natural and synthetic rubber is specific under section 771(5A)(D)(iii)(I) of the Act. We further determine preliminarily that the GOC's provision of natural and synthetic rubber through SOEs is a financial contribution within the meaning of section 771(5)(D)(iii) and that it confers a benefit under section 771(5)(E)(iv) of the Act to the extent that it is provided for less than adequate remuneration.

To determine whether a benefit has been conferred by the provision of goods, the Department follows the hierarchy set forth in 19 CFR 351.511(a)(2). The potential benchmarks provided in 19 CFR 351.511(a)(2) are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

Under 19 CFR 351.511(a)(2)(1), the first choice of a benchmark is ''market prices from actual transactions within the country under investigation.'' Because the GOC did not provide the requested information that is necessary for the Department to determine whether we can use domestic prices as a benchmark, we find that we must apply facts available in accordance with sections 776(a)(1) and (2) of the Act.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits then, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

We asked the GOC to provide information about the natural rubber and synthetic rubber industries in the PRC including a description of the industry, users of natural rubber and synthetic rubber in the PRC, and whether natural rubber and synthetic rubber producers are SOEs. Only limited information was provided in the GOC's questionnaire response dated October 29, 2007 and its supplemental questionnaire response dated November 27, 2007. In particular, in its October 29, 2007 supplemental questionnaire response, the GOC did not provide a complete list of rubber suppliers or indicate the level of its ownership interest in any rubber producer. Thus, we are not able to gauge the extent of government involvement in the PRC natural rubber and synthetic rubber industries, determine the extent to which the domestic rubber market are dominated by SOEs, or ascertain the extent to which government involvement distorts the prices for these products in the PRC. Accordingly, pursuant to sections 776(a)(2)(A) and 776(a)(2)(C) of the Act, we are relying on facts otherwise available.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

In selecting from among the facts available for the GOC, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. We find that the GOC did not act to the best of its ability in complying with our requests for information because it should have information pertaining to state ownership and control over the rubber industry within its control, but did not provide this information, as described above.

As an adverse inference, we have rejected internal prices in the PRC because we do not know the share of natural rubber or synthetic rubber produced and sold by SOEs in the PRC. As explained in the preambular language addressing 19 CFR 351.511(a), ''While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market.'' *See Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (CVD Preamble).

Because we have preliminarily determined that we cannot consider domestic prices as a potential benchmark, we turn to the next level of

the hierarchy in section 351.511(a)(2) of the Department's regulations (*i.e*, world market prices that would be available to purchasers in the country under investigation). We have calculated annual 2006 benchmarks for natural rubber and synthetic rubber based on 2006 world market prices for natural rubber and synthetic rubber as reported by the International Rubber Study Group (IRSG).[19] *See* Memorandum to the File, ''Countervailing Duty Investigation on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Natural Rubber and Synthetic Rubber Benchmarks'' (December 7, 2007) (*Rubber Benchmarks Memorandum*).

We note that the IRSG's natural rubber prices are FOB Singapore and synthetic rubber prices are FAS. Therefore, pursuant to 19 CFR 351.511(a)(2)(iv), we have added freight charges and import charges including VAT to calculate a price for natural rubber and synthetic rubber that Starbright, Guizhou Tire, and TUTRIC would have paid on the world market for these products. We obtained June 2006 freight rates from Maersk Lines. *See Rubber Benchmarks Memorandum*. We obtained the PRC import duties for natural rubber and synthetic rubber from Asia Pacific Economic Cooperation (APEC) Tariff Database at *http://www.apectariff.org/*. Imports of natural rubber into the PRC are subject to an import duty of 20 percent and imports of synthetic rubber into the PRC are subject to an import duty of 7.5 percent. *See Rubber Benchmarks Memorandum*. Finally, we obtained PRC VAT rates from the Decree 134 of the State Council, 1993. *See Rubber Benchmarks Memorandum*.

We also note that Guizhou Tire also did not provide certain requested information. Specifically, in our supplemental questionnaire, we asked Guizhou Tire to identify which of its natural rubber and synthetic rubber suppliers were SOEs. As noted above, Guizhou Tire did not provide this information. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we are relying on facts otherwise available to determine Guizhou Tire's benefit under the government's provision of natural rubber and synthetic rubber for less than adequate remuneration. For the preliminary determination, we have relied on neutral facts available and treated a portion of Guizhou Tire's natural rubber and synthetic rubber as having been purchased from SOEs. Specifically, we have identified certain suppliers of natural rubber and synthetic rubber to Guizhou Tire as SOEs. *See Rubber Benchmarks Memorandum and Guizhou Tire's Calculation Memorandum*. We are treating purchases from these suppliers as purchases from SOEs. We calculated the respective percent of the quantity of total natural rubber and synthetic rubber purchases that Guizhou Tire purchased from known SOEs during the POI. We then applied these percentages to the quantity and value of Guizhou Tire's natural rubber and synthetic rubber purchases from unknown suppliers. *See Rubber Benchmarks Memorandum* and *Guizhou Tire's Calculation Memorandum*.

To calculate the natural rubber benefit, we compared the domestic prices paid by Starbright, Guizhou Tire, and TUTRIC during the POI for natural rubber from SOEs to the 2006 C&F, duty-paid IRSG-based price for natural rubber. We treated the difference in the amounts that Starbright, Guizhou Tire, and TUTRIC would have paid by comparing our calculated benchmark to the amounts actually paid by these companies as the benefit. To calculate the synthetic rubber benefit, we compared the domestic prices paid by Starbright, Guizhou Tire, and TUTRIC for synthetic rubber from SOEs to the 2006 C&F duty-paid IRSG-based price for synthetic rubber. We treated the difference in the amounts that Starbright, Guizhou Tire, and TUTRIC would have paid by comparing our calculated benchmark to the amounts actually paid by these companies as the benefit.

We then summed these two benefits for each company and divided this benefit by that company's respective sales. On this basis, we preliminarily determine a countervailable subsidy of 1.38, 1.92, and 2.82 percent *ad valorem* for Guizhou Tire, Starbright, and TUTRIC, respectively.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Provision of Electricity for Less than Adequate Remuneration

Petitioners allege that the GOC provides electricity to certain FIEs and SOEs on a preferential basis. According to the GOC, electricity in the PRC is produced by numerous power plants and it is transmitted for local distribution by two state-owned transmission companies, State Grid and China South Power Grid. Generally, prices for uploading electricity to the grid and transmitting it are regulated by the GOC, as are the final sales prices. *See Circular on Implementation Measures Regarding Reform of Electricity Prices* (Fagaijiage (2005) No. 514) at Appendix 3 of the *Provisional Measures on Prices for Sales of Electricity* at Article 29 (''Government departments in charge of pricing at various levels shall be responsible for the administration and supervision of electricity sales prices''), provided in the October 15 GOC questionnaire response, Exhibit GOC–G–2.

Electricity consumers are divided into broad categories such as residential, commercial, large-scale industry, and agriculture. The rates charged vary across customer categories and within customer categories based on the amount of electricity consumed. Moreover, among industrial users, certain industries are specifically broken out and these industries receive special, discounted rates. Specifically, Article 8 of the *Provisional Measures on Prices for Sales of Electricity* provides that certain small and medium-sized chemical fertilizer producers shall be provided a separate electricity sales price. All other end users are charged the standard electricity price for industrial and commercial users. Thus, according to the GOC, there is no program to provide electricity at a discounted rate to SOEs or FIEs. The GOC provided a list of benchmark rates by province. We tied the rates reported by respondents to the GOC-provided schedule and to respondents supplier-specific schedules. *See* GOC and respondents' October 15 questionnaire responses and November 27 supplemental questionnaire responses. We saw no indication of discounted rates.[20]

Thus, based on the information on the record there is no indication of provision of electricity to the respondents at less than adequate remuneration pursuant to their status as SOEs or FIEs. On this basis, we preliminarily determine that the GOC's provision of electricity does not confer a countervailable subsidy. *See*, *also*, *CWP Preliminary*, 72 FR at 63883.

[19] The IRSG is comprised of a number of countries including several Asian countries, European countries and the United States. The IRSG provides price data for natural rubber from the commodity exchanges in New York, Singapore, and Europe. The IRSG also provides export price data for synthetic rubber from the USA, Japan, and France.

[20] Guizhou Tire's consolidated financial statements indicate numerous energy subsidies, provided in the form of grants and rebates. We did not have sufficient time to collect information on these potential subsidies; however, in accordance to section 351.501 of the Act, we intend to examine these subsidies further during the course of this investigation and will issue an interim analysis on them prior to the final determination.

B. VAT Export Rebates

Petitioners allege that OTR tire exporters may apply to the tax authorities for a refund up to 13 percent for taxes paid for inputs in exported goods, and that the amount is in excess of the indirect tax levied on the production and distribution of the same product sold in the domestic market. According to the GOC, the ''exemption, deduction and refund'' of VAT applies if a manufacturer exports its self-produced goods by itself or via a trading company. *See* Article 1 of the *Circular on Further Promotion of Methodology of ''Exemption, Deduction, and Refund'' of Tax for Exported Goods* (CAISHUI (2002) No. 7) provided in the GOC October 15 response at Exhibit GOC–P–4. The GOC reported the VAT levied on domestic sales of OTR tires during the POI was 17 percent and the VAT rebated for export sales of OTR tires during the POI was 13 percent.

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted ''exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.'' 19 CFR 351.517(a) and 19 CFR 351.102 (for a definition of ''indirect tax''). Because the VAT rebate applicable to exported OTR tires during the POI (13 percent) was less than the VAT levied on domestic sales of OTR tires during the POI (17 percent), the Department preliminarily determines that, for the purposes of this investigation, the VAT refund received upon the export of OTR tires does not confer a countervailable benefit. *See*, *also*, *CWP Prelim*, 72 FR at 63884.

III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Guizhou Tire, Starbright, and TUTRIC did not apply for or receive benefits during the POI under the programs listed below.

A. Discounted Loans for Export-Oriented Enterprises

B. Loan Forgiveness for SOEs

C. Foreign Currency Retention Scheme

D. Provision of Land for Less Than Adequate Remuneration to FIEs

E. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Income Program)

F. Preferential Tax Policies for Export-Oriented FIEs

G. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises

H. Tax Benefits for FIEs in Encouraged Industries that Purchase Domestic Origin Machinery

I. VAT Rebate for FIE Purchases of Domestically Produced Equipment

J. Funds for Outward Expansion of Industries in Guangdong Province

K. Export Interest Subsidy Funds for Enterprises Located in Guangdong and Zhejiang Provinces

L. Grants to Loss-Making SOEs

M. Exemption for SOEs from Distributing Dividends to the State

N. Preferential Tax Policies for Advanced Technology Foreign Invested Enterprises

O. Preferential Tax Policies for Knowledge or Technology Intensive FIEs

P. Preferential Tax Policies for High or New Technology FIEs

Q. Preferential Tax Policies for Research and Development by FIEs

R. Provincial Support in Antidumping Proceedings

For purposes of this preliminary determination, we have relied on respondents' submissions to preliminarily determine non-use of the programs listed above. During the course of verification, the Department will further examine whether these programs were used by respondents during the POI.

IV. Programs Preliminarily Determined To Be Terminated

Exemption from Payment of Staff and Worker Benefits for Export Oriented Industries

The Department determined that this program was terminated on January 1, 2002, with no residual benefits. *See CFS Final*, 72 FR 60645.

V. Programs For Which More Information Is Required

A. Grants to the Tire Industry for Electricity

Petitioners allege that the GOC has provided grants to cover a portion of electricity expenses for OTR tire producers. Petitioners also allege that the GOC authorizes local governments to offer grants to tire producers in order to cover the producers electricity costs. Guizhou Tire, Starbright, and TUTRIC stated that they did not receive benefits under this program during the POI. However, according to its financial statements, Guizhou Tire appears to receive subsidies for energy. *See* October 15 Guizhou Tire questionnaire response, Exhibit GTC–5.

At this time, we do not have sufficient information from the GOC or Guizhou Tire to determine whether this assistance received by Guizhou Tire is a countervailable subsidy. We intend to seek further information and issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

B. Provision of Water to FIEs for Less than Adequate Remuneration

Petitioners allege that the GOC provides water to certain FIEs on a preferential basis. According to the GOC, water supply is localized in the PRC. Generally, water prices are regulated by local governments pursuant to Article 26.2 of the *Regulation on Administration of City Water Supply* (Decree 158 of the State Council, 1994) provided within the October 15 GOC response at Exhibit GOC–H–1. The GOC states that water prices vary depending on the end user to which the water is provided. The GOC also states that local authorities establish their own categories of end users. End users in each of these categories are charged the same water price.

Guizhou Tire is not an FIE and as such has reported that it is not eligible for this program. *See* October 15 Guizhou Tire questionnaire response at 26. Starbright states it pumps water from its own wells, and therefore the company is not provided water by the GOC. *See* October 15 Starbright questionnaire response at 19. TUTRIC has provided its water bills; however, the company states that it does not have access to any water pricing schedules or tariffs. *See* October 15 TUTRIC questionnaire response at Exhibit 13. The GOC did not provide water pricing

schedules as requested in our supplemental questionnaire. It responded that the Department's investigation ''pertains to an alleged 'program' pertaining to the provision of land and electricity and does not involve the alleged provision of water.'' *See* November 27 GOC supplemental questionnaire at 19. This was the result of a mislabled section heading in our questionnaire, which referred to SOEs, instead of FIEs.

At this time, we do not have sufficient information from the GOC to determine whether TUTRIC received water on a preferential basis. Specifically, we will ask the GOC again for the relevant water pricing schedule and issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

C. Debt Forgiveness from State–Owned Banks to Hebei Tire

Bridgestone alleges that, in approving the acquisition of Hebei Tire by Starbright, the Hebei provincial government authorized the transfer of Hebei Tire's SOCB debt at a discount to Starbright (or its parent, GPX) in exchange for equity, thereby forgiving part of the debt. Bridgestone and petitioners also allude to the possibility that Hebei Tire's SOCB debt was forgiven before the transaction, essentially to make it a more attractive buy.

As explained in the ''Change In Ownership'' section above, at this time we do not have sufficient information from the GOC or Starbright regarding the role played by the GOC in the Hebei Tire sale. We intend to seek further information on this question and to issue an interim analysis describing our preliminary findings with respect to this program before the final determination so that parties will have the opportunity to comment on our findings before the final determination.

D. Non-Tradable Share Reform

As mentioned under the ''Case History'' section of this notice, the Department determined to investigate the Non-Tradable Share Reform program on November 14, 2007. Given that the questionnaire responses are due on December 10, 2007 (extended in response to the respondents' request), the Department does not have the information needed to and analyze this program for this preliminary determination. We will therefore analyze the responses to this allegation and address all arguments fully in a post-preliminary analysis memorandum.

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
Guizhou Tire Co., Ltd.	3.13
Hebei Starbright Tire Co., Ltd.	2.38
Tianjin United Tire & Rubber International Co., Ltd.	6.59
All-Others	4.44

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, all three individual rates can be used to calculate the all-others rate. Therefore, we have assigned the weighted-average of these three individual rates to all-other producers/exporters of OTR tires from the PRC.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Patrol (CBP) to suspend liquidation of all entries of OTR tires from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone numbers; (2) the number of participants; and, (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: December 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–24397 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination for Textile and Apparel Safeguard Action on Imports from Honduras of Cotton, Wool and Man-Made Fiber Socks

December 11, 2007.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Notice.

SUMMARY: The Committee is extending through January 18, 2008 the period for making a determination on whether to request consultations with Honduras regarding imports of cotton, wool and man-made fiber socks (merged Category 332/432 and 632 part).

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2487.

SUPPLEMENTARY INFORMATION:

Authority: Title III, Subtitle B, Section 321 through Section 328 of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA-DR'' or the ''Agreement'') Implementation Act; Article 3.23 of the Dominican Republic-Central America-United States Free Trade Agreement.

BACKGROUND:

In accordance with section 4 of the Committee's Procedures (''Procedures'') for considering action under the CAFTA-DR textile and apparel safeguard, (71 FR 25157, April 28, 2006), the Committee decided, on its own initiative, to consider whether imports of Honduran origin cotton, wool and man-made fiber socks are being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for cotton, wool and man-made fiber socks, and under such conditions as to cause serious damage, or actual threat thereof, to the U.S. industry producing these products.

On August 21, 2007 the Committee solicited public comments regarding a possible safeguard action on imports from Honduras of cotton, wool and man-made fiber socks (merged Category 332/432 and 632 part). This 30 day period allowed the public an opportunity to provide information and analysis to assist the Committee in considering this issue and in determining whether a safeguard action is appropriate. See **Solicitation of Public Comments Regarding Possible Safeguard Action on Imports from Honduras of Cotton, Wool and Man-Made Fiber Socks**, 72 FR 46611.

The Procedures state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with Honduras. However, if the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the Federal Register, including the date, by which it will make a determination.

The original 60-day determination period for this case expired on November 19, 2007. On November 6, 2007, the Committee decided to extend the deadline for making its determination until December 19, 2007. (72 FR 64050, November 14, 2007). At this time, the Committee is unable to make a determination within the extended period because it is continuing to evaluate conditions in the market as well as examining the current trade data and other relevant information available. Therefore, the Committee is further extending the determination period to January 18, 2008.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–24370 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitation of Duty-free Imports of Apparel Articles Assembled in Haiti under the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act (HOPE)

December 11, 2007.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the 12-Month Cap on Duty-Free Benefits

EFFECTIVE DATE: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

SUPPLEMENTARY INFORMATION:

Authority: The Caribbean Basin Recovery Act (CBERA), as amended by the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act of 2006 (collectively, HOPE), Title V of the Tax Relief and Health Care Act of 2006.

HOPE provides for duty-free treatment for certain apparel articles imported directly from Haiti. Section 213A (b)(2) of HOPE provides duty-free treatment for apparel articles wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, if the sum of the cost or value of materials produced in Haiti or one or more countries, as described in HOPE, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more countries, as described in HOPE, or any combination thereof, is not less than an applicable percentage of the declared customs value of such apparel articles, subject to quantitative limitation.

Section 213A (a)(1)(B) of HOPE provides that the initial applicable one-year period of quantitative limitation means the one-year period beginning on the date of the enactment of HOPE, beginning on December 20, 2006. Section 213A (b)(3) of HOPE provides that annual quantitative limitations will be recalculated for each subsequent 12-month period. Section 213A (b)(3) of HOPE also provides that the quantitative limitations for qualifying apparel imported from Haiti under this provision for the twelve-month period beginning on December 20, 2007 will be an amount not to exceed 1.25 percent of the aggregate square meter equivalent of all apparel articles imported into the United States in the most recent 12-month period for which data are available. For purposes of this notice, the most recent 12-month period for which data are available as of December 20, 2007 is the 12-month period ending on October 31, 2007.

For the one-year period beginning on December 20, 2007 and extending through December 19, 2008, the quantity of imports eligible for preferential treatment under this provision is 313,000,534 square meters equivalent. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meters equivalent of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter

equivalents used by the United States in implementing the ATC.

R. Matthew Priest,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E7–24373 Filed 12–14–07; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Department of Defense; Joint Service Committee on Military Justice (JSC).

ACTION: Notice of Public Response to Proposed Amendments to the Manual for Courts-Martial, United States (2005 ed.) (MCM).

SUMMARY: The JSC is forwarding final proposed amendments to the MCM to the Department of Defense. The proposed changes constitute the 2007 annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2007, the JSC published a notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comments on these proposals. The public meeting was held on October 24, 2007. No member of the public attended the meeting and no written comments were received. In response to a request from the House of Representatives to review procedures applicable to Article 32 proceedings, the proposed amendments republished below include a new Section 1(b) addressing Rule for Courts-Martial (R.C.M.) 405(h)(3).

Proposed Amendments After Period for Public Comment

The proposed recommended amendments to the Manual for Courts-Martial to be forwarded through the DoD for action by Executive Order of the President of the United States are as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 103 is amended by adding the following new subparagraph (20) and re-designating the current subparagraph (20) as subparagraph (21):

''(20) 'Writing' includes printing and typewriting and reproductions of visual symbols by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.''

(b) R.C.M. 405(h)(3) is amended to read as follows:

''(3) *Access by spectators.* Access by spectators to all or part of the proceedings may be restricted or foreclosed in the discretion of the commander who directed the investigation or the investigating officer. Article 32 investigations are public hearings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open investigation, the hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Commanders or investigating officers must conclude that no lesser methods short of closing the Article 32 can be used to protect the overriding interest in the case. Commanders or investigating officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a commander or investigating officer believes closing the Article 32 investigation is necessary, the commander or investigating officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the Article 32 investigating officer's report. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting.''

(c) R.C.M. 1103(b)(2)(B) is amended to read as follows:

''(B) *Verbatim transcript required.* Except as otherwise provided in subsection (j) of this rule, the record of trial shall include a verbatim transcript of all sessions except sessions closed for deliberations and voting when:''

(d) R.C.M. 1103(e) is amended to read as follows:

''(e) *Acquittal; courts-martial resulting in findings of not guilty only by reason of lack of mental responsibility; termination prior to findings; termination after findings.* Notwithstanding subsections (b), (c), and (d) of this rule, if proceedings resulted in an acquittal of all charges and specifications, in a finding of not guilty only by reason of lack of mental responsibility of all charges and specifications, or if the proceedings were terminated by withdrawal, mistrial, or dismissal before findings, or if the proceedings were terminated after findings by approval of an administrative discharge in lieu of court-martial, the record may consist of the original charge sheet, a copy of the convening order and amending orders (if any), and sufficient information to establish jurisdiction over the accused and the offenses (if not shown on the charge sheet). The convening authority or higher authority may prescribe additional requirements.''

(e) R.C.M. 1103(g)(1)(A) is amended to read as follows:

''(A) *In general.* In general and special courts-martial which require a verbatim transcript under subsections (b) or (c) of this rule and are subject to a review by a Court of Criminal Appeals under Article 66, the trial counsel shall cause to be prepared an original record of trial.''

(f) R.C.M. 1103(j)(2) is amended to read as follows:

''(2) *Preparation of written record.* When the court-martial, or any part of it, is recorded by videotape, audiotape, or similar material under subsection (j)(1) of this rule, a written, as defined in R.C.M. 103, transcript or summary as required in subsection (b)(2)(A), (b)(2)(B), (b)(2)(C), or (c) of this rule, as appropriate, shall be prepared in accordance with this rule and R.C.M. 1104 before the record is forwarded under R.C.M. 1104(e), unless military exigencies prevent transcription.''

(g) R.C.M. 1104(a)(1) is amended to read as follows:

''(1) *In general.* A record is authenticated by the signature of a person specified in this rule who thereby declares that the record accurately reports the proceedings. An electronic record of trial may be authenticated with the electronic signature of the military judge or other authorized person. Service of an authenticated electronic copy of the

record of trial with a means to review the record of trial satisfies the requirement of service under R.C.M. 1105(c) and 1305(d). No person may be required to authenticate a record of trial if that person is not satisfied that it accurately reports the proceedings.''

(h) R.C.M. 1106(d) is amended to read as follows:

''(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) *Form.* The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) *Required contents.* The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any, any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence, and the staff judge advocate's concise recommendation.''

(i) R.C.M. 1111 is amended by inserting the following sentence at the end of the rule:

''Forwarding of an authenticated electronic copy of the record of trial satisfies the requirements under this rule.''

(j) R.C.M. 1113 is amended by adding the following new subparagraph (d) and re-designating the current subparagraph (d) as subparagraph (e):

''(d) *Self-executing punishments.* Under regulations prescribed by the Secretary concerned, a dishonorable or bad conduct discharge that has been approved by an appropriate convening authority may be self-executing after final judgment at such time as:

(1) The accused has received a sentence of no confinement or has completed all confinement;

(2) The accused has been placed on excess or appellate leave; and,

(3) The appropriate official has certified that the accused's case is final. Upon completion of the certification, the official shall forward the certification to the accused's personnel office for preparation of a final discharge order and certificate.''

(k) R.C.M. 1114(a) is amended by inserting the following as subsection (a)(4):

''(4) *Self-executing final orders.* An order promulgating a self-executing dishonorable or bad conduct discharge need not be issued. The original action by a convening authority approving a discharge and certification by the appropriate official that the case is final may be forwarded to the accused's personnel office for preparation of a discharge order and certificate.''

(l) R.C.M. 1305(b) is amended by changing the first sentence to read as follows:

''(b) *Contents.* The summary court-martial shall prepare a written record of trial, which shall include:''

(m) R.C.M. 1305(c) is amended to read as follows:

''(c) *Authentication.* The summary court-martial shall authenticate the record by signing the record of trial. An electronic record of trial may be authenticated with the electronic signature of the summary court-martial.''

(n) R.C.M. 1305(d)(1)(A) is amended to read as follows:

''(A) *Service.* The summary court-martial shall cause a copy of the record of trial to be served on the accused as soon as it is authenticated. Service of an authenticated electronic copy of the record of trial with a means to review the record of trial satisfies the requirement of service under this rule.''

(o) R.C.M. 1306(b)(3) is amended to read as follows:

''(3) *Signature.* The action on the record of trial shall be signed by the convening authority. The action on an electronic record of trial may be signed with the electronic signature of the convening authority.''

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 14, Article 90, Assaulting or willfully disobeying superior commissioned officer, paragraph c.(2)(g) is amended to read as follows:

''c.(2)(g) *Time for compliance.* When an order requires immediate compliance, an accused's declared intent not to obey and the failure to make any move to comply constitutes disobedience. Immediate compliance is required for any order which does not explicitly or implicitly indicate that delayed compliance is authorized or directed. If an order requires performance in the future, an accused's present statement of intention to disobey the order does not constitute disobedience of that order, although carrying out that intention may.''

(b) Paragraph 44, Article 119, Manslaughter, paragraph b. is amended to read as follows:

''b. *Elements.*

(1) Voluntary manslaughter.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That, at the time of the killing, the accused had the intent to kill or inflict great bodily harm upon the person killed.

Note: Add the following if applicable.

(e) That the person killed was a child under the age of 16 years.

(2) Involuntary manslaughter.

(a) That a certain named or described person is dead;

(b) That the death resulted from the act or omission of the accused;

(c) That the killing was unlawful; and

(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, robbery, or aggravated arson.

Note: Add the following if applicable.

(e) That the person killed was a child under the age of 16 years.''

(c) Paragraph 44, Article 119, Manslaughter, paragraph c.(1)(c) is added following paragraph c.(1)(b):

''(c) *When committed upon a child under 16 years of age.* The maximum punishment is increased when voluntary manslaughter is committed upon a child under 16 years of age. The accused's knowledge that the child was under 16 years of age at the time of the offense is not required for the increased maximum punishment.''

(d) Paragraph 44, Article 119, Manslaughter, paragraph c.(2)(c) is added following paragraph c.(2)(b):

''(c) *When committed upon a child under 16 years of age.* The maximum punishment is increased when involuntary manslaughter is committed upon a child under 16 years of age. The accused's knowledge that the child was under 16 years of age at the time of the offense is not required for the increased maximum punishment.''

(e) Paragraph 44, Article 119, Manslaughter, paragraph e.(3) is added following paragraph e.(2):

''(3) *Voluntary manslaughter of a child under 16 years of age.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.''

(f) Paragraph 44, Article 119, Manslaughter, paragraph e.(4) is added following paragraph e.(3):

''(4) *Involuntary manslaughter of a child under 16 years of age.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.''

(g) Paragraph 44, Article 119, Manslaughter, paragraph f. is amended to read as follows:

''f. *Sample specifications.*

(1) *Voluntary manslaughter.*

In that_____(personal jurisdiction data), did, (at/on board—location) (subject matter jurisdiction data, if required), on or about_____, willfully and unlawfully kill_____, (a child under 16 years of age) by_____him/her (in) (on) the_____with a_____.

(2) *Involuntary manslaughter.*

In that_____ (personal jurisdiction data), did, (at/on board location) (subject matter jurisdiction data, if required), on or about_____, (by culpable negligence) (while (perpetrating) (attempting to perpetrate) an offense directly affecting the person of_____, to wit: (maiming) (a battery) (_____)) unlawfully kill_____ (a child under 16 years of age) by_____ him/her (in) (on) the_____ with a_____.''

Section. 3. These amendments shall take effect on [30 days after signature].

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to [30 days after signature] that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to [30 days after signature], and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Dated: December 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–24388 Filed 12–14–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DoD–2007–OS–0132]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing 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 January 16, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service 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 December 11, 2006, to the House Committee on Government Reform, the Senate Committee on 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 December 12, 2000, 65 FR 239.

Dated: December 11, 2007.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

T7040

SYSTEM NAME:

Work Year and Personnel Cost Reporting.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center (DECC) Mechanicsburg—Bldg. 308, Naval Support Activity (NSA), 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense Navy civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Numbers (SSN), work year and personnel cost data for U.S. Navy civilian employees.

Authority for maintenance of the system: 5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Vol. 4; 31 U.S.C. Sections 3511 and 3513; and E.O. 9397 (SSN).

PURPOSE(S):

This system will be the financial system of record and the single source for consolidated financial information for the Navy civilian employees. It will support the core financial requirements for the Work Year and Personnel Cost Reporting (WYPC).

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:

The DoD 'Blanket Routine Uses' published at the beginning of the DoD 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:

Records in files folders and electronic storage media.

RETRIEVABILITY:

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

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, 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 are used to control access to the system data, and procedures are in place to detect and deter browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records are temporary in nature; cut off at the end of the fiscal year; and destroyed 3 years after cutoff. Records are destroyed by degaussing, burning, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Defense Finance and Accounting Service, Systems Management Directorate, Navy Working Capital Fund Systems Office, 1240 East Ninth Street, Cleveland, OH 44199–8002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests will contain individual's full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of what they are seeking.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves that is contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests will contain individual's full name, Social Security Number (SSN), current address, telephone number, and provide a reasonable description of what they are seeking.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From individuals, and U.S. Navy.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–24376 Filed 12–14–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Navy

[USN–2007–0049]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Navy is deleting a system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 16, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy 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 Department of Navy proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion 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 new or altered systems reports.

Dated: December 11, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01770–2

SYSTEM NAME:

Casualty Information Support System (September 22, 2006, 71 FR 55442).

REASON:

These records fall under the following DoD-wide system of records notice, A0600–8–1c AHRC DoD, Defense Casualty Information Processing System (DIPS) published in the **Federal Register** on April 25, 2005 with number of 70 FR 21183.

[FR Doc. E7–24377 Filed 12–14–07; 8:45 am]

BILLING CODE 5001–07–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395-6974. Commenters should include the following subject line in their response ≥Comment: [insert OMB number], [insert abbreviated collection name, e.g., ≥Upward Bound Evaluation≥]. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 11, 2007.

Angela C. Arrington,

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

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Client Assistance Program.

Frequency: Annually.

Affected Public:

Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 896.

Abstract: Form RSA-227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to individuals seeking or receiving services from programs and projects authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3507. 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* 202-245-6536. 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. E7–24270 Filed 12–14–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395-6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 11, 2007.

Angela C. Arrington,

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

Office of Special Education and Rehabilitative Services

Type of Review: Extension of a currently approved collection.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 912.

Abstract: Form RSA-509 will be used to analyze and evaluate the Protection & Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3508. 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* 202-245-6536. 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. E7–24271 Filed 12–14–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Secretary of Education requests comments on a modified 2008–2009 Application for Federal Student Aid (FAFSA). The College Cost Reduction and Access Act of 2007 establishes, effective with the 2008–2009 award year, the Teacher Education Assistance for College and Higher Education (TEACH) Grant program, which provides up to $4,000 a year in grant assistance to students who plan on being a teacher and meet certain specified requirements. Through an updated FAFSA, Federal Student Aid

will assure that students are aware of the TEACH Grant program, the program's eligibility criteria, and that students will indicate their plans to pursue a teaching career. The Department proposes to accomplish this by asking the following question on the FAFSA on the Web: ''Are you planning on completing coursework, now or in the future, necessary for you to become an elementary or secondary school teacher? A 'YES' response to this question will allow your school to provide you with additional information on a new federal program for students who meet certain conditions and plan on becoming teachers.''

The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs).

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 28, 2007.

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

Dated: December 13, 2007.

Angela C. Arrington,

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

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 16,787,640.

Burden Hours: 8,054,467.

Abstract: The College Cost Reduction and Access Act of 2007 establishes, effective with the 2008–2009 award year, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, which provides up to $4,000 a year in grant assistance to students who plan on being a teacher and meet certain specified requirements. Because the 2008–2009 FAFSA Paperwork Reduction Act (PRA) burden hour estimate (approved December 2006) does not include the burden associated with reading and responding to a new TEACH grant question (the TEACH grant did not exist at that time) we are submitting this request for an emergency clearance of an updated 2008–2009 FAFSA. Through the updated FAFSA, we are striving to make students aware of the TEACH Grant program and the eligibility criteria, in addition to determining their plans to pursue a teaching career. We propose to accomplish this by asking the following question on FAFSA on the Web: ''Are you planning on completing coursework, now or in the future, necessary for you to become an elementary or secondary school teacher? A ''YES' response to this question will allow your school to provide you with additional information on a new federal program for students who meet certain conditions and plan on becoming teachers.''

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 clicking 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 directed to the e-mail address *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 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

[FR Doc. E7–24452 Filed 12–14–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Fujitsu General From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure [Case No. CAC–010]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the Department of Energy's Decision and Order in Case No. CAC–010, which grants a Waiver to Fujitsu General Limited (Fujitsu) from the existing Department of Energy (DOE) residential central air conditioner and heat pump test procedure for specified Airstage Variable Refrigerant Flow (VRF) multi-split products. As a condition of this waiver, Fujitsu must test and rate its Airstage multi-split products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Francine Pinto or Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), notice is hereby given of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants Fujitsu a Waiver from the applicable DOE residential central air conditioner and heat pump test procedure under 10 CFR part 430, subpart B, Appendix M, for its Airstage VRF multi-split products, subject to a condition requiring Fujitsu to test and rate its Airstage products pursuant to the alternate test procedure provided in this notice. Today's decision requires that Fujitsu may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance

with the DOE test procedure, consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representation fairly discloses the results of such testing.[1] (42 U.S.C. 6293(c))

Issued in Washington, DC, on November 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Fujitsu General Limited (Fujitsu) (Case No. CAC–010).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part B of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the program in Part B, Part C of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves residential products under Part B, as well as commercial equipment under Part C. Under both parts, the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, both parts generally authorize the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3), 6314(a)(2))

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR part 430, subpart B, Appendix M. For commercial package air conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. The test procedures in that final rule apply to three-phase equipment. However, there is no prescribed test procedure for single-phase, small commercial package air conditioning and heating equipment.

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). In general, a waiver terminates on the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for 180 days, if necessary. 10 CFR 430.27(h).

On June 14, 2004, Fujitsu filed a Petition for Waiver from the test procedures applicable to its Airstage line of residential and commercial VRF multi-split air conditioning and heating equipment.[2] Fujitsu's petition requested a waiver from both the residential and commercial test procedures. The applicable residential test procedures are contained in 10 CFR part 430, subpart B, Appendix M, and, as explained above, there is no applicable commercial test procedure for such products under 10 CFR part 430 or 431. Fujitsu seeks a waiver from the test procedures for this product class because the design characteristics of its Airstage VRF multi-split equipment prevent testing according to the currently prescribed residential test procedures.

On February 4, 2005, DOE published Fujitsu's Petition for Waiver in the **Federal Register**. 70 FR 5980. On August 8, 2005, Fujitsu separately filed an Application for Interim Waiver for the same products for which it petitioned for a waiver on June 14, 2004. DOE granted the Application for Interim Waiver on January 5, 2006.

In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products of the same type as Fujitsu's Airstage VRF multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006 **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test

[1] Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

[2] The Fujitsu Airstage VRF multi-split product line at issue here involves single-phase equipment for both residential and commercial use. Because there is no DOE test procedure for single-phase, small commercial package air-conditioning and heating equipment, no waiver is required for Fujitsu's single-phase commercial Airstage equipment. Nonetheless, Fujitsu's Airstage VRF multi-split products are properly classified as ''consumer products,'' because, to a significant extent, they are for personal use or consumption by individuals (given their frequent residential applications). (42 U.S.C. 6291(1)(B)) Thus, the Fujitsu Airstage VRF multi-split products require a waiver from DOE's test procedure for residential central air conditioners and heat pumps, under 10 CFR part 430, subpart B, Appendix M.

procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. Most of the comments favored DOE's proposed alternate test procedure. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. The MEUS Decision and Order, including the alternate test procedure, was published in the **Federal Register** on April 9, 2007. 72 FR 17528.

DOE received comments on the Fujitsu petition from Carrier Corporation (Carrier), Trane Division of American Standard Inc. (Trane), Lennox International Inc. (Lennox), and MEUS. These comments are discussed in further detail below.

Assertions and Determinations

Fujitsu's Petition for Waiver

On June 14, 2004, Fujitsu submitted a Petition for Waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment for its Airstage VRF multi-split products. Fujitsu's petition asserts that the energy use of its Airstage systems cannot be accurately measured using the current test procedure for the following reasons:

1. The test procedure provides for testing of a pair of indoor and outdoor assemblies making up a typical split system, but it provides no direction about how Airstage units, with more than ten thousand combinations of indoor units, could be evaluated with just one outdoor unit test.

2. The test procedure calls for testing ''matched assemblies,'' but Airstage systems are designed to be used in zoned systems where the capacity of the indoor units does not match the capacity of the outdoor unit.

In summary, the bases for Fujitsu's Petition for Waiver involve: (1) The problem of being physically unable to test most of the complete systems in a laboratory; (2) the regulatory requirement to test the highest-sales-volume combination; and (3) the lack of a method for predicting the performance of untested combinations. These were the same bases underlying the MEUS waiver discussed above.

Therefore, the Fujitsu petition requested that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. Fujitsu did not include an alternate test procedure in its Petition for Waiver. However, DOE understands that Fujitsu is actively working with ARI to develop test procedures that accurately reflect the operation and energy consumption of these particular product designs.

Of the four comments on the Fujitsu Petition for Waiver, only MEUS supported the petition. Carrier claimed Fujitsu's Airstage VRF systems could be tested using the calorimeter air enthalpy test method set forth in ASHRAE Standard 37, ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment.'' Although DOE believes that use of this test, as Carrier recommends, is theoretically possible and would likely provide more accurate results in the cooling mode, it is not a practical solution because existing calorimeter test rooms are too small to test Fujitsu's VRF Airstage systems with more than three or four indoor units. Lennox and Trane asserted that without a testing and rating requirement, Fujitsu could make energy efficiency claims without the burden of providing standardized ratings. DOE believes that its alternate test procedure (discussed below) effectively addresses these objections.

As previously noted, DOE recently addressed a situation regarding multi-split products that is relevant to the Fujitsu products at issue here. Specifically, on March 24, 2006, DOE published in the **Federal Register** a Petition for Waiver from MEUS concerning its R410A CITY MULTI VRFZ products, which are very similar to Fujitsu's VRF Airstage multi-split products. 71 FR 14858. In that publication, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660 August 27, 2004).

71 FR 14858, 14861 (March 24, 2006).

Since that time, DOE has developed such an alternate test procedure. Therefore, to enable Fujitsu to make energy efficiency representations for its specified Airstage VRF multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of Fujitsu's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver.

DOE's Alternate Test Procedure

The alternate test procedure has two basic components. First, it permits Fujitsu to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to five indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below. Second, having a DOE test procedure that can be applied to its products allows Fujitsu to represent the energy efficiency of that product, because any such representation must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for testing of a non-tested combination in two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or (2) if the first method is not available, then at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

DOE believes that adopting this alternative test procedure as described above (thereby allowing Fujitsu to make energy efficiency representations for non-tested combinations) is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure [3] tends to rate these products conservatively, because they are tested under conditions where they operate less efficiently than found in typical use. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, uses less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

[3] 10 CFR part 430, subpart B, Appendix M.

The alternate test procedure applies to both residential and commercial multi-split products. However, some provisions are specific to residential or commercial products. For example, section (A) of the alternate test procedure has different provisions for residential and commercial products. In contrast, section (B), which defines the combinations of indoor and outdoor units to test, and section (C), which sets forth the requirements for making representations, are the same for both residential and commercial products.

Section (A) of the alternate test procedure distinguishes between residential and commercial products for two reasons. First, 10 CFR 430.24, used for residential products, already has requirements for selecting split-system combinations based on the highest sales volume. However, part 431 of 10 CFR, which applies to commercial products, has no comparable requirements. Therefore, section (A) of the alternate test procedure modifies the existing residential and commercial requirements so that both residential and commercial products can use the same definition of a ''tested combination,'' which is set forth in section (B). Second, section (A) requires several test procedure revisions to determine the seasonal energy efficiency ratio and heating seasonal performance factor for the tested combination of residential products. No test procedure revisions are introduced for commercial products because EPCA directs DOE to adopt generally accepted industry test standards (unless amendments to those industry test procedures are determined by clear and convincing evidence not to meet the requirements of the statute). (42 U.S.C. 6314(a)(4)) The changes for residential products relate to: (1) The requirement that all indoor units operate during all tests; (2) the restriction on using only one indoor test room; (3) the selection of the modulation levels (maximum, minimum, and a specified intermediate speed) used when testing; and (4) the algorithm for estimating performance over the intermediate speed operating range. DOE proposed these changes in its July 20, 2006 notice of proposed rulemaking. 71 FR 41320.

For today's Decision and Order, the changes made by the final rule published in the **Federal Register** on October 22, 2007 (72 FR 59906) to test procedure sections 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2 constitute mandatory elements of the alternate test procedure. These changes allow indoor units to cycle off, allow the manufacturer to specify the compressor speed used during certain tests, and introduce a new algorithm for estimating power consumption.

With regard to the laboratory testing of both residential and commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decides to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). Most of the comments received by DOE in response to the March 2006 notice favored the proposed alternate test procedure. Commenters generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed.

In light of the discussion above, DOE believes that the problems described above would prevent testing of Fujitsu's Airstage VRF multi-split products according to the test procedures currently prescribed in 10 CFR part 430, subpart B, Appendix M. After reviewing and considering all of the comments submitted regarding the proposed alternate test procedure, DOE has decided to adopt the proposed alternate test procedure, with the clarifications discussed above. DOE will also consider applying the same alternate test procedure to waivers for similar central air conditioners and heat pumps.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) concerning the Fujitsu Petition for Waiver. The FTC did not have any objections to the issuance of a waiver to Fujitsu.

Conclusion

After careful consideration of all the materials submitted by Fujitsu, the comments received, and consultation with the FTC, it is ordered that:

(1) The ''Petition for Waiver'' filed by Fujitsu General Limited (Fujitsu) (Case No. CAC–010) is hereby granted as set forth in the paragraphs below.

(2) Fujitsu shall not be required to test or rate its Airstage variable refrigerant flow multi-split air conditioner and heat pump models listed below on the basis of the current test procedures contained in 10 CFR part 430, subpart B, Appendix M, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Outdoor unit, Heat pump type:
AOU54U****
51.9 kBtu/hr cooling/54.4 kBtu/hr heating, single phase, 208–230Vac, 60Hz.

Outdoor unit, Cooling-only type:
AOU54F****
51.9 kBtu/hr cooling, single phase, 208–230Vac, 60Hz.

Indoor units:
AR Series, Compact duct type (ceiling/floor standing), ARU 7/9/12/14/18/20/22****
AR Series, Duct type, ARU25/30/36/45****
AS Series, Wall mounted type, ASU7/9/12/14/18/24/30****
AU Series, Compact ceiling cassette type, AUU7/9/12/14/18****
AU Series, Ceiling cassette type, AUU20/25/30/36/45/54****

The ''****'' denotes engineering differences in the basic models.

(3) *Alternate test procedure.*

(A) Fujitsu shall be required to test the products listed in paragraph (2) above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR part 430, except that:

(i) Fujitsu shall not be required to comply with: (1) The first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales;'' and (2) the third sentence in 10 CFR 430(m)(2), including the provisions of 10 CFR 430(m)(2)(i) and (ii). Instead of

testing the combinations likely to have the highest volume of retail sales, Fujitsu may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. Additionally, instead of following the provisions of 10 CFR 430(m)(2)(i) and (ii) for every other system combination using the same outdoor unit as the tested combination, Fujitsu shall make representations concerning the Airstage variable refrigerant flow multi-split products covered in this waiver according to the provisions of subparagraph (C) below.

(ii) Fujitsu shall be required to comply with 10 CFR part 430, subpart B, Appendix M as amended by the final rule published in the **Federal Register** on October 22, 2007. 72 FR 59906. The test procedure changes applicable to multi-split products are in sections: 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and five indoor units.

(ii) The indoor units shall:

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95 percent and 105 percent of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50 percent of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) *Representations.* In making representations about the energy efficiency of its Airstage variable refrigerant flow multi-split air conditioner and heat pump products, for compliance, marketing, or other purposes, Fujitsu must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For Airstage multi-split combinations tested in accordance with this alternate test procedure, Fujitsu must disclose these test results.

(ii) For Airstage multi-split combinations that are not tested, Fujitsu must make a disclosure based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date of issuance of this Order until April 21, 2008, which is the effective date of a DOE final rule prescribing an amended test procedure appropriate to the model series manufactured by Fujitsu listed above. This final rule was published on October 22, 2007 (72 FR 59906).

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on November 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–24438 Filed 12–14–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Samsung Air Conditioning From the Department of Energy Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures [Case No. CAC–009]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the Department of Energy's Decision and Order in Case No. CAC–009, which grants a waiver to Samsung Air Conditioning (Samsung) from the existing Department of Energy (DOE) residential and commercial package air conditioner and heat pump test procedures for specified Digital Variable Multi (DVM) variable refrigerant flow multi-split products. As a condition of this waiver, Samsung must test and rate its DVM multi-split products according to the alternate test procedure set forth in this notice.

DATES: This Decision and Order is effective December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l) and 10 CFR 431.401(f)(4), notice is hereby given of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants Samsung a waiver from the applicable DOE residential and commercial package air conditioner and heat pump test procedures [1] for its DVM multi-split products, subject to a condition requiring Samsung to test and rate its DVM multi-split products pursuant to the alternate test procedure provided in this notice. Today's decision requires that Samsung may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and such representation fairly discloses the results of such testing.[2] (42 U.S.C. 6293(c))

[1] For residential products, the applicable test procedure is set forth in 10 CFR part 430, subpart B, Appendix M. For commercial products, the applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)).

[2] Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Issued in Washington, DC, on November 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Samsung Air Conditioning (Samsung) (Case No. CAC–009).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part B of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' (42 U.S.C. 6291–6309) Similar to the Program in Part B, Part C of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves residential products under Part B, as well as commercial equipment under Part C. Under both parts, the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, both parts generally authorize the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3), 6314(a)(2))

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR part 430, subpart B, Appendix M. For commercial package air conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted ARI Standard 210/240–2003 for commercial package air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations at 10 CFR 431.95(b)(2) incorporate by reference the relevant ARI standards, and 10 CFR 431.96 directs manufacturers of commercial package air-conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. (The cooling capacities of Samsung's DVM multi-split products fall in the ranges covered by ARI Standard 340/360–2004 and the DOE test procedure for residential products referred to above.)

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products, when the petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). The waiver provisions for commercial equipment are substantively identical to those for covered consumer products and are found at 10 CFR 431.401. Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii); 10 CFR 431.401(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l); 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m); 10 CFR 430.401(g).

The waiver process also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2); 10 CFR 431.401(a)(2). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for 180 days, if necessary. 10 CFR 430.27(h); 10 CFR 431.401(e)(4).

On October 7, 2003, Samsung filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to its DVM line of residential and commercial multi-split air conditioning and heating equipment. Samsung's petition requested a waiver from both the residential and commercial test procedures. The applicable residential test procedures are contained in 10 CFR part 430, subpart B, Appendix M, and the applicable commercial test procedures are contained in ARI Standard 340/360–2004 [3] (incorporated by reference at 10 CFR 431.95(b)(2)). Samsung seeks a waiver from the applicable test procedures because the design characteristics of its DVM systems prevent testing according to the currently prescribed test procedures.

On February 28, 2005, DOE published Samsung's Petition for Waiver and granted the Application for Interim Waiver. 70 FR 9630. In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for products very similar to Samsung's DVM products. 71 FR 14858 (March 24, 2006). In the March 24, 2006 **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. Most of the comments responded favorably to DOE's

[3] In its petition, Samsung also requested a waiver from ARI Standard 210/240–2003 (incorporated by reference at 10 CFR 431.95(b)(1)). However, based on a review of the products listed by Samsung in its petition, DOE has determined that none of these products has the combined features (i.e., three-phase power and rated capacity less than 65,000 Btu/h) as would necessitate a waiver from ARI Standard 210/240–2003.

proposed alternate test procedure. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. The MEUS Decision and Order, including the alternate test procedure, was published in the **Federal Register** on April 9, 2007. 72 FR 17528.

DOE received comments on the Samsung Petition from Carrier Corporation (Carrier), Daikin U.S. Corporation, and Fujitsu General. These comments are discussed below.

Assertions and Determinations

Samsung's Petition for Waiver

On October 7, 2003, Samsung submitted a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment for its new DVM multi-split products. Samsung's petition presented several arguments in support of its claim that the design characteristics of its DVM multi-split systems prevent testing according to the currently prescribed test procedures. Specifically, Samsung claimed that no other product currently available for sale in the U.S. offers the ability of a direct expansion system to vary its capacity every 20 seconds between 10 percent and 100 percent of the building design load, and argued that no existing test procedure can provide a method for rating at those capacity points. Samsung also asserted that existing test procedures do not require calculating integrated part-load values in the heating mode and do not account for either the benefits of the DVM system's zoned cooling or the inherent benefits of eliminating duct loss in a ductless system.

Therefore, the Samsung Petition requested that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. Samsung did not include an alternate test procedure in its Petition for Waiver. (However, DOE understands that Samsung is actively working with ARI to develop test procedures that accurately reflect the operation and energy consumption of these particular product designs.)

Regardless of their accuracy, DOE believes that these assertions are inapposite to the present case for the reasons that follow. First, for commercial systems at or above 65,000 Btu/h and less than 135,000 Btu/h, EPCA mandates use of the full load energy efficiency ratio (EER) descriptor, and the relevant energy performance is the peak-load efficiency, not the seasonal energy savings. (42 U.S.C. 6313(a)(1)(C)) A waiver can only be granted if a test procedure does not fairly represent the peak-load energy consumption characteristics, which EER measures. For Samsung's residential models, the seasonal energy efficiency ratio (SEER) captures some of the benefits of the DVM multi-split products' part-load efficiency. Nevertheless, there are deficiencies in the current DOE test methods and calculation algorithms when applied to multi-split systems. DOE has previously acknowledged these limitations in its current test procedure, and accordingly, MEUS was granted a waiver on the following grounds:

1. No existing test procedure provides a method for testing and rating a system that utilizes one outdoor unit and sixteen indoor units.

2. No existing test procedure can provide a method for rating systems where the type and capacity of the indoor unit can be mixed in the same system. The DVM system can mix together six different indoor models with seven different capacities, resulting in over 1,000 combinations.

Given the present situation, Samsung can make the same claims regarding its DVM multi-split products. Therefore, the bases for Samsung's Petition for Waiver involve: (1) The problem of being physically unable to test most of the complete systems in a laboratory; (2) difficulties associated with the regulatory requirement to test the highest-sales-volume combination; and (3) the lack of a method for predicting the performance of untested combinations.

Of the three comments on the Samsung petition, only Carrier Corporation (Carrier) expressed opposition. Carrier claimed that Samsung's DVM multi-split systems could be tested using the calorimeter air enthalpy test method set forth in ASHRAE Standard 37, ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment.'' Although DOE believes that use of this test, as Carrier recommends, is theoretically possible and would likely provide more accurate results in the cooling mode, it is not a practical solution because existing calorimeter test rooms are too small to test Samsung's DVM multi-split systems with more than three or four indoor units. DOE believes that its alternate test procedure (discussed below) effectively addresses these objections.

As mentioned above, DOE recently addressed a situation regarding multi-split products that is relevant to the Samsung products at issue here. Specifically, on March 24, 2006, DOE published in the **Federal Register** a Petition for Waiver from MEUS relating to its R410A CITY MULTI VRFZ products, which are very similar to Samsung's DVM multi-split products. 71 FR 14858. In that publication, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products (69 FR 52660 (August 27, 2004).

71 FR 14858, 14861 (March 24, 2006).

Since that time, DOE has developed such an alternate test procedure. Thus, in order to enable Samsung to make energy efficiency representations for its specified DVM multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of Samsung's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver.

DOE's Alternate Test Procedure

The alternate test procedure has two basic components. First, it permits Samsung to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to five indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure. Second, having a DOE test procedure that can be applied to its product allows Samsung to represent the energy efficiency of that product, because any such representation must fairly disclose the results of such testing. The DOE test procedure, as modified by the alternate test procedure provided in this Decision and Order, provides for testing of a non-tested combination in two ways: (1) at an energy efficiency level determined under a DOE-approved alternative rating method; or (2) if the first method is not available, then at the efficiency level of

the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

DOE believes that adopting this alternate test procedure as described above (thereby allowing Samsung to make energy efficiency representations for non-tested combinations) is reasonable because the outdoor unit is the principal efficiency driver. The current test procedures tend to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the test procedure, which requires full-load testing. Under full load, the entire building would require cooling. Additionally, the current test procedure for commercial equipment requires full-load testing, which disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

The alternate test procedure applies to both residential and commercial multi-split products. However, some provisions are specific to residential or commercial products. For example, section (A) of the alternate test procedure has different provisions for residential and commercial products. In contrast, section (B), which defines the combinations of indoor and outdoor units to test, and section (C), which sets forth the requirements for making representations, are the same for residential and commercial products.

Section (A) distinguishes between residential and commercial products for two reasons. First, 10 CFR 430.24, used for residential products, already has requirements for selecting split-system combinations based on the highest sales volume. However, 10 CFR part 431, which applies to commercial products, has no comparable requirements. Therefore, section (A) of the alternate test procedure modifies the existing residential and commercial requirements so that both residential and commercial products can use the same definition of a ''tested combination,'' which is set forth in section (B). Second, section (A) requires several test procedure revisions to determine the SEER and heating seasonal performance factor (HSPF) for the tested combination of residential products. No test procedure revisions are introduced for commercial products, because EPCA directs DOE to adopt generally accepted industry test standards for these commercial products (unless amendments to those industry test procedures are determined by clear and convincing evidence not to meet the requirements of the statute) (42 U.S.C. 6314(a)(4)). In contrast, for residential products, DOE develops its own test procedures, and the changes to the test procedure for residential products resulting from this notice relate to: (1) The requirement that all indoor units operate during all tests; (2) the restriction on using only one indoor test room; (3) the selection of the modulation levels (maximum, minimum, and a specified intermediate speed) used when testing; and (4) the algorithm for estimating performance over the intermediate speed operating range. DOE proposed these changes in its July 20, 2006 notice of proposed rulemaking. 71 FR 41320.

For today's Decision and Order, the changes made by the final rule published in the **Federal Register** on October 22, 2007 (72 FR 59906) to test procedure sections 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2 constitute mandatory elements of the alternate test procedure. These changes allow indoor units to cycle off, allow the manufacturer to specify the compressor speed used during certain tests, and introduce a new algorithm for estimating power consumption.

With regard to the laboratory testing of both residential and commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must be subject to meeting the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if the Department decides to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14858, 14861 (March 24, 2006). Most of the comments received by DOE in response to the March 2006 notice favored the proposed alternate test procedure. Commenters generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of Samsung's DVM basic models according to the test procedures currently prescribed in 10 CFR part 430, Subpart B, Appendix M, and ARI Standard 340/360–2004. After reviewing and considering all of the comments submitted regarding the proposed alternate test procedure, DOE has decided to adopt the proposed alternate test procedure, with the clarifications discussed above. DOE will also consider applying the same alternate test procedure to waivers for similar residential and commercial central air conditioners and heat pumps.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) concerning the Samsung Petition for Waiver. The FTC did not have any objections to the issuance of a waiver to Samsung.

Conclusion

After careful consideration of all the material that was submitted by Samsung, the comments received, and consultation with the FTC, it is ordered that:

(1) The Petition for Waiver submitted by Samsung Air Conditioning (Samsung) (Case No. CAC–009) is hereby granted as set forth in the paragraphs below.

(2) Samsung shall not be required to test or rate its Digital Variable Multi (DVM) products listed below on the basis of the currently applicable test

procedures (contained in 10 CFR part 430, Subpart B, Appendix M, and ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Commercial Systems: Any product using these outdoor units:

RVMH100FAMOU, RVMC100FAMOU, RVMC070FAM0U.

For these products, the applicable test procedure is ARI 340/360–2004, as amended by the alternate test procedure as set forth in paragraph (3).

Residential Systems: Any product using these outdoor units:

RVMH050CBM0U, RVMC050CBM0U.

For these products, the applicable test procedure is the residential test procedure contained in 10 CFR part 430, subpart B, appendix M, as amended by the alternate test procedure as set forth in paragraph (3).

DVM indoor units:

AVMKH020CAOU, AVMKC020CAOU, AVMKH032CAOU, AVMKC032CA0U, AVMKH040CA0U, AVMKC040CAOU, AVMCH052CAOU, AVMCC052CA0U, AVMCH072CAOU, AVMCC072CAOU, AVMCH105CAOU, AVMCC105CA0U, AVMBH020CAOU, AVMBC020CA0U, AVMBH032CAOU, AVMBC032CA0U, AVMBH040CAOU, AVMBC040CA0U, AVMBH052CAOU, AVMBC052CA0U, AVMBH072CAOU, AVMBC072CA0U, AVMHH105CAOU, AVMHC105CAOU, AVMHH128CAOU, AVMHC105CAOU, AVMDH052CA0U, AVMDC052CA0U, AVMDH072CA0U, AVMDC072CA0U, AVMWH020CAOU, AVMWCH020CAOU, AVMWH032CAOU, AVMWC032CAOU, AVMWH040CAOU, AVMWC040CAOU, AVMWH052CAOU, AVMWC052CAOU, AVMWH072CAOU, AVMWC072CAOU.

(3) *Alternate test procedure.*

(A) Samsung shall be required to test the products listed in paragraph (2) above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR parts 430 and 431, except that:

(i) For products covered by 10 CFR part 430 (consumer products), Samsung shall not be required to comply with: (1) The first sentence in 10 CFR 430.24(m)(2), which refers to ''that combination manufactured by the condensing unit manufacturer likely to have the largest volume of retail sales;'' and (2) the third sentence in 10 CFR 430.24(m)(2), including the provisions of 10 CFR 430.24(m)(2)(i) and (ii). Instead of testing the combinations likely to have the highest volume of retail sales, Samsung may test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. Additionally, instead of following the provisions of 10 CFR 430.24(m)(2)(i) and (ii) for every other system combination using the same outdoor unit as the tested combination, Samsung shall make representations concerning the DVM multi-split products covered in this waiver according to the provisions of subparagraph (C) below.

(ii) For products covered by 10 CFR part 430 (consumer products), Samsung shall be required to comply with 10 CFR 430, subpart B, appendix M as amended by the final rule published in the **Federal Register** on October 22, 2007. 72 FR 59906. The test procedure changes applicable to multi-split products are in sections: 2.1, 2.2.3, 2.4.1, 3.2.4 (including Table 6), 3.6.4 (including Table 12), 4.1.4.2, and 4.2.4.2.

(iii) For products covered by 10 CFR part 431 (commercial products), Samsung shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Samsung shall make representations concerning the DVM multi-split products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and five indoor units.

(ii) The indoor units shall:

(a) Represent the highest sales volume type models;

(b) Together, have a capacity between 95 percent and 105 percent of the capacity of the outdoor unit;

(c) Not, individually, have a capacity greater than 50 percent of the capacity of the outdoor unit;

(d) Have a fan speed that is consistent with the manufacturer's specifications; and

(e) All have the same external static pressure.

(C) *Representations.* In making representations about the energy efficiency of its DVM multi-split products, for compliance, marketing, or other purposes, Samsung must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For DVM combinations tested in accordance with this alternate test procedure, Samsung must disclose these test results.

(ii) For DVM combinations that are not tested, Samsung must make a disclosure based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date of issuance of this Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the model series manufactured by Samsung listed above. This expiration date is April 21, 2008 for the Samsung residential products only, for which such DOE final rule was published on October 22, 2007 (72 FR 59906).

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on November 4, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–24439 Filed 12–14–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1332–000; ER07–1332–001; ER07–1332–002]

Smoky Hills Wind Farm, LLC; Notice of Issuance of Order

December 10, 2007.

Smoky Hills Wind Farm, LLC (Smoky Hills Wind Farm) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Smoky Hills Wind Farm also requested waivers of various Commission regulations. In particular, Smoky Hills Wind Farm requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Smoky Hills Wind Farm.

On November 29, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Smoky Hills Wind Farm, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is December 28, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Smoky Hills Wind Farm is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Smoky Hills Wind Farm, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Smoky Hills Wind Farm's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24298 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1236–000; ER07–1236–001; ER07–1236–002]

Yuma Cogeneration Associates; Notice of Issuance of Order

December 10, 2007.

Yuma Cogeneration Associates (Yuma) filed an application for market-based rate authority, with an accompanying market-based rate tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Yuma so requested waivers of various Commission regulations. In particular, Yuma requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Yuma.

On December 4, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Yuma, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is January 7, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Yuma is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Yuma, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Yuma's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24306 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13039–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13039–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Wappapello Dam Hydroelectric Project.

f. *Location:* St. Francis River in Wayne County, Missouri. It would use the U.S. Army Corps of Engineers' Wappapello Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13039–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Wappapello Dam and operated in a run-of-river mode would consist of: (1) A new 80-foot long, 80-foot wide, 50-foot high concrete powerhouse and associated switchyard immediately below the dam on the right bank of the existing stilling basin; (2) two 200-foot-long, 7-foot-diameter steel penstocks; (3) two turbine/generator units with a combined installed capacity of 9 megawatts; (4) a new 23,734-foot long above ground transmission line extending from the switchyard near the powerhouse south to an interconnection point with an existing transmission line owned by the Poplar Bluff Light & Water-Sewer Department; and (5) appurtenant facilities. The proposed Wappapello Dam Project would have an average annual generation of 33 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24297 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12850–000; Project No. 12883–000]

FFP Project 25, LLC; Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12850–000 12883–000.

c. *Date Filed:* July 25, 2007.

d. *Applicant:* FFP Project 25, LLC., Hydro Green Energy, LLC.

e. *Name of Project:* Reliance Light Project.

f. *Location:* The project would be located on the Mississippi River in Iberville Parishes, Louisiana. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dan Irvin, FFP Project 25, LLC, 69 Bridge Street, Manchester, MA 01944, phone (978) 232–3536.Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, phone (877) 556–6566.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–6062.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12850–000 & P–12883–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12828–000, Date Filed: July 23, 2007, Date Issued: October 2, 2007, Due Date: December 1, 2007.

l. *Description of Project:* The proposed project for FFP Project 25, LLC would consist of: (1) 3,050 proposed 20 kilowatt Free Flow generating units having a total installed capacity of 61 megawatts, (2) a proposed transmission line, and (3) appurtenant facilities. The Free Flow Power Corporation's project would have an average annual generation of 267.18 gigawatt-hours and be sold to a local utility.

The proposed project for Hydro Green Energy, LLC would consist of: (1) 50 proposed 100 kilowatt dual ducted horizontal axis hydrokinetic generating units having a total installed capacity of 5 megawatts, (2) a proposed 3-miles-long, 13.6-kV transmission line, and (3) appurtenant facilities. The Hydro Green Energy, LLC's project would have an average annual generation of 82.87 gigawatt-hours and be sold to a local utility.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings

r. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24299 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13033–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13033–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Ferrells Bridge Dam Hydroelectric Project.

f. *Location:* Cypress Creek in Marion County, Texas. It would use the U.S. Army Corps of Engineers' Ferrells Bridge Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13033–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Ferrells Bridge Dam and operated in a run-of-river mode would consist of: (1) A new 75-foot long, 75-foot wide, 50-foot high concrete powerhouse; (2) two 100-foot-long, 9-foot-diameter steel penstocks; (3) a new tailrace channel immediately downstream, river right, of the existing Corps' outlet works; (4) two turbine/generator units with a combined installed capacity of 9 megawatts; (5) a new 28,805-foot long above ground transmission line extending from the switchyard near the powerhouse northeast to an interconnection point with an existing transmission; and (6) appurtenant facilities. The proposed Ferrells Bridge Dam Project would have an average annual generation of 24 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each

representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24300 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13034–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13034–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Mississippi River Lock & Dam No. 17 Hydroelectric Project

f. *Location:* Mississippi River in Mercer County, Iowa. It would use the U.S. Army Corps of Engineers' Mississippi River Lock & Dam No. 17.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13034–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Mississippi River Lock & Dam No. 17 and operated in a run-of-river mode would consist of: (1) A new 90-foot long, 130-foot wide, 60-foot high concrete powerhouse; (2) a new intake channel and tailrace channel on the levee section of the Corps' facility, on the Iowa shore, opposite the river from the lock structure; (3) two turbine/generator units with a combined installed capacity of 8 megawatts; (4) a new 27,217-foot long above ground transmission line extending from the switchyard near the powerhouse west to an interconnection point with an existing transmission line; and (5) appurtenant facilities. The proposed Mississippi River Lock & Dam No. 17 Project would have an average annual generation of 45 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title

''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24301 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13035–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13035–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Kaskaskia River Lock and Dam Hydroelectric Project.

f. *Location:* Kaskaskia River in Randolph County, Illinois. It would use the U.S. Army Corps of Engineers' Kaskaskia River Lock & Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13035–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Kaskaskia River Lock & Dam and operated in a run-of-river mode would consist of: (1) A new 30-foot long, 30-foot wide, 30-foot high concrete powerhouse and associated switchyard; (2) a new intake channel and tailrace channel opposite the existing lock (river left); (3) two turbine/generator units with a combined installed capacity of 8 megawatts; (4) a new 46,578-foot long above ground transmission line extending from the switchyard near the powerhouse southwest to an interconnection point with an existing transmission line owned by Southern Illinois Power; and (5) appurtenant facilities. The proposed Kaskaskia Lock & Dam Project would have an average annual generation of 27 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24302 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13036–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13036–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Mount Morris Dam Hydroelectric Project.

f. *Location:* Genesee River in Livingston County, New York. It would use the U.S. Army Corps of Engineers' Mount Morris Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13036–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Mount Morris Dam and operated in a run-of-river mode would consist of: (1) A new 50-foot long, 50-foot wide, 30-foot high concrete powerhouse and associated switchyard; (2) two 50-foot-long, 18-foot-diameter steel penstocks; (3) a new tailrace channel immediately downstream, river left, of the existing Corps' outlet works; (4) one turbine/generator unit with an installed capacity of 5 megawatts; (5) a new 3,603-foot long above ground transmission line extending from the switchyard near the powerhouse northeast to an interconnection point with an existing transmission line owned by Rochester Gas and Electric Corporation; and (6) appurtenant facilities. The proposed Mount Morris Dam Project would have an average annual generation of 20 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license

application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24303 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13037–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13037–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* Nimrod Dam Hydroelectric Project.

f. *Location:* Fourche La Fave River in Yell County, Arkansas. It would use the U.S. Army Corps of Engineers' Nimrod Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13037–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Nimrod Dam and operated in a run-of-river mode would consist of: (1) A new 50-foot long, 50-foot wide, 40-foot high concrete powerhouse and associated switchyard; (2) one 200-foot-long, 8-foot-diameter steel penstock; (3) a new tailrace channel immediately downstream of the existing Corps' outlet works; (4) one turbine/generator unit with an installed capacity of 6 megawatts; (5) a new 6,079-foot long above ground transmission line extending from the switchyard near the powerhouse east to an interconnection point with an existing transmission line owned by First Electric Cooperative Electric Corporation; and (6) appurtenant facilities. The proposed Nimrod Dam Project would have an average annual generation of 13 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit

application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24304 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13038–000]

BPUS Generation Development, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 10, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13038–000.

c. *Date filed:* September 28, 2007.

d. *Applicant:* BPUS Generation Development, LLC.

e. *Name of Project:* William H. Harsha Dam Hydroelectric Project.

f. *Location:* East Fork of the Little Miami River in Clermont County, Ohio. It would use the U.S. Army Corps of Engineers' William H. Harsha Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey M. Auser, P.E., BPUS Generation Development, LLC, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2700.

i. *FERC Contact:* Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13038–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' William H. Harsha Dam and operated in a run-of-river mode would consist of: (1) A new 100-foot long, 100-foot wide, 50-foot high concrete powerhouse immediately below the dam, on the left bank of the existing stilling basin; (2) one 1,000-foot-long, 9-meter-diameter steel penstock; (3) the existing Corps' intake and a new conduit embed in the base of one of the existing outlet tunnels; (4) two turbine/generator units with a combined installed capacity of 15 megawatts; (5) a new 9,760-foot long above ground transmission line extending from the switchyard near the powerhouse south to an interconnection point with an existing transmission line; and (6) appurtenant facilities. The proposed William H. Harsha Dam Project would have an average annual generation of 25 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–24305 Filed 12–14–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1687.07; NESHAP for Aerospace Manufacturing and Rework (Renewal); in 40 CFR part 63, subpart GG; was approved 11/08/2007; OMB Number 2060–0314; expires 11/30/2010.

EPA ICR Number 1442.19; Land Disposal Restrictions (Renewal); in 40 CFR part 268; was approved 11/09/2007; OMB Number 2050–0085; expires 11/30/2010.

EPA ICR Number 0976.13; The 2007 Hazardous Waste Report (Renewal); in 40 CFR 270.30, 40 CFR 262.40, 40 CFR 262.40(b), 40 CFR 262.41, 40 CFR 264.75, and 40 CFR 265.75; was approved 11/15/2007; OMB Number 2050–0024; expires 11/30/2009.

EPA ICR Number 0616.09; Compliance Requirement for Child Resistant Packaging (Renewal); in 40 CFR part 157; was approved 11/15/2007; OMB Number 2070–0052; expires 11/30/2010.

EPA ICR Number 1903.02; 2007 National Survey of Local Emergency Planning Committees (Reinstatement); was approved 11/21/2007; OMB Number 2050–0162; expires 11/30/2010.

EPA ICR Number 1591.18; Regulation of Fuels and Fuel Additives: Modification of Anti-Dumping Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and U.S. Territories (Final Rule); in 40 CFR

80.93(d); was approved 11/27/2007; OMB Number 2060–0277; expires 12/31/2007.

EPA ICR Number 1250.08; Request for Contractor Access to TSCA Confidential Business Information (CBI) (Renewal); was approved 11/28/2007; OMB Number 2070–0075; expires 11/30/2010.

Short-Term Approval

EPA ICR Number 1748.04; Annual Reporting form for State Small Business Stationary source technical and environmental compliance assistance program (SBTCP); short-term extension was approved by OMB on 11/26/2007; OMB Number 2060–0337; expires 01/31/2008.

EPA ICR Number 2020.02; Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington (Final Rule); in 40 CFR part 49, subpart M; short-term extension was approved by OMB on 11/28/2007; OMB Number 2060–0558; expires 02/29/2008.

Comment Filed

EPA ICR Number 2266.01; National Volatile Organic Compound (VOC) Emission Standards for Aerosol Coatings (Proposed Rule); OMB filed comments on 11/15/2007.

EPA ICR Number 2267.01; NESHAP for Iron and Steel Foundry Area Sources (Proposed Rule); OMB filed comments on 11/30/2007.

Withdrawn

EPA ICR Number 2028.01; OMB Number 2060–0551; NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD) (Renewal) was withdrawn by Agency on 12/06/2007.

Dated: December 10, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24350 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0595; FRL–8507–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulation of Fuels and Fuel Additives: Detergent Gasoline (Renewal); EPA ICR No. 1655.06, OMB Control No. 2060–0275

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 16, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0595, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jaimee Dong, Office of Transportation and Air Quality, (Mailcode: 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9672; fax number: (202) 343–2802; e-mail address: *dong.jaimee@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 21, 2007 (72 FR 46629), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0595, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation 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 Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Regulation of Fuels and Fuel Additives: Detergent Gasoline (Renewal).

ICR numbers: EPA ICR No. 1655.06, OMB Control No. 2060–0275.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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, and 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: Gasoline combustion results in the formation of engine deposits that contribute to increased emissions. Detergent additives deter deposit formation. The Clean Air Act requires gasoline to contain a detergent additive. The regulations at 40 CFR part 80—subpart G specify certification requirements for manufacturers of detergent additives, recordkeeping or reporting requirements for blenders of detergents into gasoline or post-refinery component (any gasoline blending stock or any oxygenate which is blended with gasoline subsequent to the gasoline refining process), and reporting or recordkeeping requirements for manufacturers, transferors, or transferees of detergents, gasoline, or post-refinery component (PRC). These requirements ensure that (1) a detergent is effective before it is certified by EPA, (2) a certified detergent, at the minimum concentration necessary to be effective

(known as the lowest additive concentration (LAC)), is blended into gasoline, and (3) only gasoline which contains a certified detergent at its LAC is delivered to the consumer. The EPA maintains a list of certified gasoline detergents, which is publicly available. As of June 2007 there were 393 certified detergents and 18 detergent manufacturers.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.2 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.

Respondents/Affected Entities: Manufacturers, transferors and transferees, and blenders into gasoline or post-refinery component of detergent additives; Manufacturers, transferors, and transferees of gasoline or post-refinery components; and detergent additive researchers.

Estimated Number of Respondents: 1368.

Frequency of Response: 50.8

Estimated Total Annual Hour Burden: 220,608.

Estimated Total Annual Cost: $15,547,566, includes $335,180 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 1200 hours and an increase in total cost of $2,269,962 in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. These changes are due to a decrease in annual certification applications, from 30 to 10, and an update in labor costs.

Dated: December 10, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24351 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–TRI–2007–0355; FRL–8507–5]

Agency Information Collection Activities, Proposed Collections; Toxic Chemical Release Reporting; Request for Comments on Proposed Changes and the Renewal of Form R (EPA ICR No. 1363.15, OMB Control No. 2070–0093)

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to make changes to and renew an existing approved collection. The ICR Supporting Statement, which is abstracted below, describes the nature of the information collection (including proposed minor form changes) and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 16, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–TRI–2007–0355, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to EPA Docket Center, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 202–566–0753; fax number, 202–566–0740; e-mail address, *vail.cassandra@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA submitted an earlier version of the ICR Supporting Statement to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 11, 2007 (72 FR 37762), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received four comments during the comment period, which are addressed in the Response to Comments Document. Any additional comments on the revised ICR Supporting Statement should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for the ICR described in this notice under Docket ID No. EPA–HQ–TRI–2007–0355, which is available for online viewing at *http://www.regulations.gov*, or in person at the OEI Docket, EPA Docket Center (EPA/DC), U.S. EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8 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 OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted materials, Confidential Business Information (CBI,) or other information for which public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: ICR Renewal and Proposed Changes to the TRI Form R, Information Collection Request Supporting Statement.

ICR numbers: EPA ICR No. 1363.15, OMB Control No. 2070–0093.

ICR Status: The current ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 and 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: The Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of certain listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the U.S. Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and other waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires facilities to provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities. Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a useful picture of the total disposition of chemicals in their communities and helps focus industry's attention on pollution prevention and source reduction opportunities.

In accordance with the mission to protect the environment and human health, EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas. EPA collects, processes, and makes available to the public all of the information collected that is not subject to trade secrecy claims. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet.

This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake regulatory and enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities. Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media, and provide only a limited perspective on a facility's overall performance. With TRI, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating their production efficiencies and for measuring progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim trade secrecy for a chemical's identity as described in section 322 of EPCRA and its implementing regulations in 40 CFR part 350. EPA will disclose information that is covered by a claim of trade secrecy only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 350 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 29.66 hours per form for a single listed Non-PBT chemical and 51.34 hours for a single listed PBT chemical. (All estimates incorporate proposed changes in the reporting burden.) 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.

Respondents/Affected Entities: The reporting requirements found in EPCRA section 313 apply to owners and operators of facilities that have 10 or more full-time employees, manufacture or process more than 25,000 pounds or otherwise use more than 10,000 pounds of a listed chemical, and are in the manufacturing sector or in any of seven additional industry sectors added to the TRI Program by EPA in 1997. Historically these sectors were identified by their Standard Industrial Classification (SIC) codes. Beginning with Reporting Year (RY) 2006, the TRI Program converted from SIC codes to North American Industry Classification System (NAICS) codes (71 FR 32464, June 6, 2006). The full list of NAICS codes for facilities that must report to TRI (including exemptions and/or limitations) if all other threshold determinations are met can be found in Appendix F of the ICR Supporting Statement.

Estimated Number of Responses: 66,751.

Estimated Number of Respondents: 19,441.

Frequency of Response: Once per year.

Estimated Total Annual Hour Burden: 3,217,280.

Estimated Total Annual Cost: $160,790,000, includes $0 annualized capital or O&M costs.

Changes in the Estimates: In this ICR Renewal, the effect of the TRI final rule expanding Form A eligibility (71 FR 76932, December 22, 2006) is expected to reduce overall TRI reporting burden due to increased Form A eligibility (i.e., number of Form Rs decreased and number of Form As increased, yielding a net burden decrease) with total respondent burden of Form R reporting projected at 3,215,715 hours.

Proposed Changes from the Last Approval: EPA proposes to make the following changes to the ICR for the TRI Form R:

(1) *Provide more specific ''basis of estimate'' codes (applies to Form R only.)* Facilities may currently select among four codes to indicate how they calculate their release quantities: the use of monitoring data (code M), mass balance calculations (C), emission factors (E), and other approaches (O). The addition of more specific codes in the TRI Reporting Forms and Instructions will allow reporting facilities to provide more detailed information on their basis of estimate. Collecting more specific ''basis of estimate'' data will help the TRI Program determine which methods are most often used and/or appropriate for use by particular industries for certain chemicals, as well as when new TRI guidance may be needed. Therefore, EPA will provide a more extensive list of codes for ''basis of estimate'' in the TRI Reporting Forms and Instructions, including (M1) and (M2) for continuous and periodic/random monitoring,

respectively; and (E1) and (E2) for published and site-specific emission factors, respectively. (Codes (C) and (O) will remain unchanged.) By using these codes, facilities will indicate the principal method used to determine the quantities reported to TRI.

(2) *Enhance Public Contact information (applies to Form and Form A.)* EPA proposes to add a place on the form where a facility can provide the e-mail address for the ''Public Contact'' on the Form R, in addition to the Public Contact name and telephone number which are already on the Form R. This should make it easier to contact the individual identified.

(3) *Add boxes for entering revision codes (applies to Form R and Form A.)* The TRI Program currently receives many form revisions each year, but does not currently collect information on the reasons for the revisions. EPA proposes to add new revision codes that will help both the public and the TRI Program staff understand why a facility resubmitted a form. In addition, the TRI Program may be able to analyze the revision codes entered by facilities to identify and address recurring reporting issues that facilities may be facing, ultimately reducing errors and saving time for both the Agency and the reporting facilities. Facilities would be able to report up to two codes (listed and defined in the TRI Reporting Forms and Instructions) indicating the main reason(s) that a form is being revised.

(4) *Provide a field for withdrawing a form and add boxes for entering withdrawal Codes (applies to Form R and Form A.)* Currently, a facility that wishes to withdraw a previously submitted form must submit its request, including the rationale, as a hard copy memorandum to the TRI Data Processing Center. Adding a ''Withdrawal'' field and associated code boxes for reasons for withdrawal to Form R will (1) streamline the withdrawal process for facilities, (2) make it easier for EPA to automate the withdrawal process, and (3) improve the Agency's ability to analyze the reasons for withdrawals.

Notes

1. EPA also proposed other changes (72 FR 37762; July 11, 2007) but has since concluded those changes are not necessary.

2. Additional changes were made to adjust estimates for ''Number of Responses'' and ''Burden Hours'' to reflect the most recent conditions of RY2005. In the last ICR, RY2002 was the base year; in the last OMB Action, RY2004 was the base year. Over this period of time, the total number of Form R submissions declined.

Dated: December 11, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24369 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0468; FRL–8507–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal); EPA ICR No. 1808.05, OMB Control No. 2020–0007

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 16, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2007–0468, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket; Environmental Protection Agency; Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Aimee Hessert, NEPA Compliance Division, Office of Federal Activities, (Mail Code 2252A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0993; fax number: (202) 564–0072; e-mail address: *hessert.aimee@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 12, 2007 (72 FR 32292), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 1 comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2007–0468, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Enforcement and Compliance 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 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 Enforcement and Compliance Docket is 202–564–7152.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal).

ICR numbers: EPA ICR No. 1808.05, OMB Control No. 2020–0007.

ICR Status: This ICR is scheduled to expire on December 31, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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: The Environmental Protection Agency's (EPA's) regulations at 40 CFR part 8, Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Final Rule), were promulgated pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996 (Act), 16 U.S.C. 2401 et seq., as amended, 16 U.S.C. 2403a, which implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). The Final Rule provides for assessment of the environmental impacts of nongovernmental activities in Antarctica, including tourism, for which the United States is required to give advance notice under Paragraph 5 of Article VII of the Treaty, and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. The requirements of the Final Rule apply to operators of nongovernmental expeditions organized or proceeding from the territory of the United States to Antarctica and include commercial and non-commercial expeditions. Expeditions may include ship-based tours; yacht, skiing or mountaineering expeditions; privately funded research expeditions; and other nongovernmental activities. The Final Rule does not apply to individual U.S. citizens or groups of citizens planning travel to Antarctica on an expedition for which they are not acting as an operator. (Operators, for example, typically acquire use of vessels or aircraft, hire expedition staff, plan itineraries, and undertake other organizational responsibilities.) The Final rule provides nongovernmental operators with the specific requirements they need to meet in order to comply with the requirements of Article 8 and Annex I to the Protocol. The provisions of the Final Rule are intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

Environmental Documentation. Persons subject to the Final Rule must prepare environmental documentation to support the operator's determination regarding the level of environmental impact of the proposed expedition. Environmental documentation includes a Preliminary Environmental Review Memorandum (PERM), an Initial Environmental Evaluation (IEE), or a Comprehensive Environmental Evaluation (CEE). The environmental document is submitted to the Office of Federal Activities (OFA). If the operator determines that an expedition may have: (1) Less than a minor or transitory impact, a PERM needs to be submitted no later than 180 days before the proposed departure to Antarctica; (2) no more than minor or transitory impacts, an IEE needs to be submitted no later than 90 days before the proposed departure; or (3) more than minor or transitory impacts, a CEE needs to be submitted. Operators who anticipate such activities are encouraged to consult with EPA as soon as possible regarding the date for submittal of the CEE. (Article 3(4), of Annex I of the Protocol requires that draft CEEs be distributed to all Parties and the Committee for Environmental Protection 120 days in advance of the next Antarctic Treaty Consultative Meeting (ATCM) at which the CEE may be addressed.)

The Protocol and the Final Rule also require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis of an IEE or CEE. The record developed through these measures needs to be designed to: (a) Enable assessments to be made of the extent to which environmental impacts of nongovernmental expeditions are consistent with the Protocol; and (b) provide information useful for minimizing and mitigating those impacts and, where appropriate, on the need for suspension, cancellation, or modification of the activity. Moreover, an operator needs to monitor key environmental indicators for an activity proceeding on the basis of a CEE. An operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE would be prepared. For activities that require an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. Should an activity require a CEE, the operator should consult with EPA to: (a) Identify the monitoring regime appropriate to that activity, and (b) determine whether and how the operator might utilize relevant monitoring data collected by the U.S. Antarctic Program. OFA would consult with the National Science Foundation and other interested Federal agencies regarding the monitoring regime.

In cases of emergency related to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment which would require an activity to be undertaken without completion of the documentation procedures set out in the Final Rule, the operator would need to notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities. (During the time the Interim Final and Final Rules have been in effect, there were no emergencies requiring notification by U.S. operators. An Interim Final Rule was in effect from April 30, 1997, until replaced on December 6, 2001, by the Final Rule).

Environmental documents (e.g., PERM, IEE, CEE) are submitted to OFA. Environmental documents are reviewed by OFA, in consultation with the National Science Foundation and other interested Federal agencies, and also made available to other Parties and the public as required under the Protocol or otherwise requested. OFA notifies the public of document availability via the World Wide Web at: *http://www.epa.gov/compliance/nepa/international/antarctica/index.html*. The types of nongovernmental activities currently being carried out (e.g., ship-based tours, land-based tours, flights, and privately funded research expeditions) are typically unlikely to have impacts that are more than minor or transitory, thus an IEE is the typical level of environmental documentation submitted. For the 1997–1998 through 2003–2004 austral summer seasons during the time the Interim Final Rule and Final Rule have been in effect, all respondents submitted IEEs with the exception of one PERM. Paperwork reduction provisions in the Final Rule that are used by the operators include: (a) Incorporation of material in the environmental document by referring to it in the IEE, (b) inclusion of all proposed expeditions by one operator within one IEE; (c) use of one IEE to address expeditions being carried out by more than one operator; and (d) use of multi-year environmental documentation to address proposed expeditions for a period of up to five consecutive austral summer seasons.

Coordination of Review of Information Received from Other Parties to the Treaty. The Final Rule also provides for the coordination of review of information received from other Parties and the public availability of that information including: (1) A

description of national procedures for considering the environmental impacts of proposed activities; (2) an annual list of any IEEs and any decisions taken in consequence thereof; (3) significant information obtained and any action taken in consequence thereof with regard to monitoring from IEEs to CEEs; and (4) information in a final CEE. This provision fulfills the United States' obligation to meet the requirements of Article 6 of Annex I to the Protocol. The Department of State is responsible for coordination of these reviews of drafts with interested Federal agencies, and for public availability of documents and information. This portion of the Final Rule does not impose paperwork requirements on any nongovernmental person subject to U.S. regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1663 hours annually, or 72 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.

Respondents/Affected Entities: Most operators are ship-based or land-based tour operators. The SIC Code for Tour Operators is 4725 and the NAICS Code is 561520.

Estimated Number of Respondents: 23.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 1663 hours.

Estimated Total Annual Cost: $133,916, includes $4,219 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 115 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is the result of an increase in the number of respondents anticipated during the 3-year ICR renewal period and the level of environmental documentation EPA anticipates the respondents will submit.

Dated: December 6, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24371 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–TRI–2007–0355; FRL–8507–4]

Agency Information Collection Activities, Proposed Collections; Toxic Chemical Release Reporting; Request for Comments on Proposed Changes and the Renewal of the Form A Certification Statement (EPA ICR No. 1704.09, OMB Control No. 2070–0143)

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to make changes to and renew an existing approved collection. The ICR Supporting Statement, which is abstracted below, describes the nature of the information collection (including proposed minor form changes) and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 16, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–TRI–2007–0355, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to EPA Docket Center, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 202–566–0753; fax number, 202–566–0740; e-mail address, *vail.cassandra@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA submitted an earlier version of the ICR Supporting Statement to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 11, 2007 (72 FR 37762), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received four comments during the comment period, which are addressed in the Response to Comments document. Any additional comments on the revised ICR Supporting Statement should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR Supporting Statement under Docket ID No. EPA–HQ–TRI–2007–0355, which is available for online viewing at *http://www.regulations.gov*, or in person at the OEI Docket, EPA Docket Center (EPA/DC), U.S. EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, to access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information for which public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: The ICR Renewal and Proposed Changes to the TRI Form A Certification Statement, Information Collection Request Supporting Statement.

ICR numbers: EPA ICR No. 1704.09, OMB Control No. 2070–0143.

ICR Status: The current ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 and 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: The Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of certain listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the U.S. Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and transfers of and other waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires facilities to provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities. Annual reporting under EPCRA section 313 of toxic chemical releases and other waste management information provides citizens with a useful picture of the total disposition of chemicals in their communities and helps focus industry's attention on pollution prevention and source reduction opportunities.

In accordance with the mission to protect the environment and human health, EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas. EPA collects, processes, and makes available to the public all of the information collected that is not subject to trade secrecy claims. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet.

This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake regulatory and enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities. Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media, and provide only a limited perspective on a facility's overall performance. With TRI, communities and governments know what toxic chemicals industrial facilities in their area release, transfer, or otherwise manage as waste. In addition, industries have an additional tool for evaluating their production efficiencies and for measuring their progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim trade secrecy for a chemical's identity as described in section 322 of EPCRA and its implementing regulations in 40 CFR part 350. EPA will disclose information that is covered by a claim of trade secrecy only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 350 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20.52 hours for facilities submitting a Form A Certification Statement for Non-PBT chemicals and 35.89 hours for facilities submitting a Form A Certification statement for a single listed PBT chemical under EPCRA section 313. (All estimates incorporate proposed changes in the reporting burden.) 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.

Respondents/Affected Entities: Facilities with low quantities of listed toxic chemicals in waste may certify on a Form A that they do not exceed an annual reportable amount (ARA) for total waste management (release, recycling, energy recovery, and treatment). Detailed release and waste management information need not be reported. Previously, a facility that met the EPCRA section 313 reporting thresholds, but estimated that their total waste management of a listed non-persistent, bioaccommulative, toxic (non-PBT) chemical did not exceed 500 pounds per year, could use the Form A Certification Statement, rather than the longer Form R, provided that facility met certain other conditions. The use of Form A was not previously allowed for PBT chemicals. Now due to a final TRI rule promulgated (71 FR 76932, December 22, 2006) Form A eligibility has been expanded as follows:

- *New Eligibility for Form A: PBT Chemicals*—allows a facility reporting on PBT chemicals, except dioxin and dioxin-like compounds, with zero disposal or other releases to use Form A, provided they meet the 1,000,000 pound alternate reporting threshold and have 500 pounds or less of total other waste-management quantities. (Sections 8.2—8.8)
- *Expanded Eligibility for Form A: Non-PBT Chemicals*—allows a facility reporting on Non-PBT chemicals with total waste management of 5,000 pounds or less and 2,000 pounds or less of disposal or other releases to use Form A, provided they meet the 1,000,000 pound alternate reporting threshold.

Each qualifying facility that chooses to apply this alternate manufacture, process or otherwise-use threshold must file a Form A Certification Statement certifying that they met the condition of the alternate threshold for one or more chemicals, in lieu of completing a Form R for each listed chemical for which the facility exceeded statutory thresholds. The Form A Certification Statement is submitted to both the TRI Data

Processing Center and the designated state recipient in the same manner that the Form R is submitted. The Form A Certification Statement provides a signed statement that the sum of the amount of the listed toxic chemical or chemicals in releases or wastes did not exceed the appropriate PBT or Non-PBT release and waste thresholds for the reporting year, and that the chemical(s) was manufactured, processed, or otherwise-used in an amount not exceeding 1,000,000 pounds during this reporting year. A single Form A Certification Statement may contain as many listed toxic chemicals as meet the conditions of the alternate threshold.

Estimated Number of Responses: 10,235.

Estimated Number of Respondents: 10,235.

Frequency of Response: Once per year.

Estimated Total Annual Hour Burden: 515,901.

Estimated Total Annual Cost: $26,007,920 includes $0 annualized capital or O&M costs.

Changes in the Estimates: In this ICR Renewal, the effect of the TRI final rule expanding the eligibility criteria for Form A is expected to reduce the overall burden for TRI reporting overall due to increased Form A eligibility (i.e., number of Form Rs decreased and number of Form As increased, yielding a net burden decrease) with total respondent burden of Form A reporting projected at 515,284 hours. The TRI Program is proposing to add certain data elements to both reporting forms, but the addition of these data elements is estimated to be relatively small, increasing the total reporting burden for Form A reporting to 515,901 hours.

Proposed Changes from the Last Approval: EPA proposes to make the following changes to the TRI Form A Certification Statement:

(1) *Enhance Public Contact information (applies to Form R and A.)* EPA proposes to add a ''Public Contact'' field to the Form A Certification Statement so that a facility can provide the name of a person who can respond to questions from the public about the facility's Form A. This field would include the name, telephone number, and e-mail address for the public contact to make it easy to contact the individual identified. To date, some public contact information has been collected on Form R, but not on Form A.

(2) *Add boxes for entering revision codes (applies to Form R and Form A.)* The TRI Program currently receives many form revisions each year, but does not currently collect information on the reasons for the revisions. The new revision codes will allow both the public and the TRI Program staff to better understand why a facility resubmitted a form. In addition, by analyzing the reasons for revisions, the TRI Program may be better able to address recurring reporting issues or problems that facilities may be facing, ultimately reducing errors and saving time for both the Agency and the reporting facilities. Therefore, facilities will now report up to two codes (listed and defined in the RFIs) indicating the main reason(s) that a form is being revised.

(3) *Provide a field for withdrawing a form; and add boxes for entering withdrawal codes (applies to Form R and Form A.)* Currently, a facility that wishes to withdraw a previously submitted form must submit its request, including the rationale, as a hard copy memorandum to the TRI Data Processing Center. Adding a ''Withdrawal'' field and associated code boxes for reasons for withdrawal to Form A will (1) streamline the withdrawal process for facilities, (2) make it easier for EPA to automate the withdrawal process, and (3) improve the Agency's ability to analyze the reasons for withdrawals.

Notes:

1. EPA also proposed other changes (72 FR 37762; July 11, 2007) but has since concluded those changes are not necessary.

2. Baseline adjustments were made to ''Number of Responses,'' ''Number of Respondents'' and ''Burden Hours'' to reflect the most recent conditions of RY2005. In the last ICR, RY2002 was the base year; in the last OMB Action, RY2004 was the base year. Over this period of time, the total number of Form A submissions declined.

3. An additional change was made to the Form A ''Number of Responses'' and ''Number of Respondents'' to adjust for previously overstated counts.

Dated: December 11, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–24372 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8507–7]

Clean Water Act Section 303(d): Availability of 86 Total Maximum Daily Loads (TMDLs) in Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the administrative record file for comment on 86 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas under section 303(d) of the Clean Water Act (CWA). Several of these TMDLs available for notice, are being completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before January 16, 2008.

ADDRESSES: Comments on the 86 TMDLs should be sent to Ms. Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–7373, or e-mail: *smith.diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/6wq/npdes/tmdl/index.htm,* or obtained by calling (214) 665–2145 or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comments on 86 TMDLs

By this notice EPA is seeking comment on the following 86 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
08040102–016	Caddo River	Copper and Zinc.
08040102–018	Caddo River	Copper and Zinc.
08040102–019	Caddo River	Copper and Zinc.
08040102–023	South Fork Caddo R.	Copper and Zinc.
08040201–005	Ouachita River	Copper and Zinc.
08040201–006	Smackover Creek	Copper and Zinc.
08040201–007	Smackover Creek	Copper and Zinc.
08040201–606	El Dorado Chemical Company Tributary.	Copper, Zinc., and Nitrate.
08040202–002	Ouachita River	Copper and Zinc.
08040202–004	Ouachita River	Copper and Zinc.
08040202–006	Bayou de L'Outre	TDS, Chloride, Sulfate., Copper, Zinc., and Lead.
08040202–007	Bayou de L'Outre	TDS, Chloride, Sulfate., Copper. Zinc., and Lead.
08040202–008	Bayou de L'Outre	TDS, Chloride, Sulfate., Copper, Zinc., and Lead.
08040203–007	Saline River	TDS, Chloride, and Sulfate.
08040203–008	Lost River	TDS, Chloride, and Sulfate.
08040203–009	Saline River	TDS, Chloride, and Sulfate.
08040203–010	Saline River	TDS, Chloride, and Sulfate.
08040203–904	Big Creek	Lead., Siltation/Turbidity.
08040204–006	Saline River	TDS, Chloride, and Sulfate.
08040205–001	Bayou Bartholomew	TDS, Chloride, and Sulfate.
08040205–002	Bayou Bartholomew	TDS, Chloride, and Sulfate.
08040205–007	Cutoff Creek	Turbidity.
08040205–012U	Bayou Bartholomew	TDS, Chloride, and Sulfate.
08040205–013	Bayou Bartholomew	TDS, Chloride, and Sulfate.
08040206–015	Big Cornie Creek	Sulfate. and Zinc.
08040206–016	Little Cornie Creek	Sulfate. and Zinc.
08040206–716	Walker Branch	Sulfate. and Zinc.
08040206–816	Little Cornie Creek	Sulfate. and Zinc.
08040206–916	Walker Branch	Sulfate. and Zinc.
08020203–007	Blackfish Bayou	Siltation/Turbidity.
08020203–005	Blackfish Bayou	Siltation/Turbidity.
08020203–003	Blackfish Bayou	Siltation/Turbidity.
08040101–048	Prairie Creek	Siltation/Turbidity.
08040201–001U	Moro Creek	Siltation/Turbidity.
08040201–001L	Moro Creek	Siltation/Turbidity.
08040204–005	Big Creek	Siltation/Turbidity.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 86 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan.

Dated: December 10, 2007.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E7–24380 Filed 12–14–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2007–25]

Filing Dates for the Illinois Special Election in the 14th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Illinois has scheduled elections on February 5, 2008, and March 8, 2008, to fill the U.S. House of Representatives seat in the Fourteenth Congressional District vacated by Representative J. Dennis Hastert.

Committees required to file reports in connection with the Special Primary Election on February 5, 2008, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on March 8, 2008, shall file a 12-day Pre-Primary Report, a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Illinois Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on January 24, 2008; a 12-day Pre-General Report on February 25, 2008; and a 30-day Post-General Report on April 7, 2008. (See chart below for the closing date for each report).

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on January 24, 2008. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2008 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Illinois Special Primary or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements stated in the Commission's disclosure rules,

unauthorized committees that trigger the filing of the Pre-Primary Report will be required to file this report on two separate forms. One form to cover 2007 activity, labeled as the Year-End Report; and the other form to cover only 2008 activity, labeled as the Pre-Primary Report. Both forms must be filed by January 24, 2008.

Committees filing monthly that support candidates in the Illinois Special Primary or Special General Election should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Illinois Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml*.

Report	Close of books[1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Calendar of Reporting Dates for Illinois Special Election Committees Involved in *Only* the Special Primary (02/05/08), Must File			
Year-End	—Waived—		
Pre-Primary	01/16/08	01/21/08	01/24/08
April Quarterly	03/31/08	04/15/08	04/15/08
Committees Involved in *Both* the Special Primary (02/05/08) and Special General (03/08/08), Must File:			
Year-End	—Waived—		
Pre-Primary	01/16/08	01/21/08	01/24/08
Pre-General	02/17/08	02/22/08	02/25/08
Post-General	03/31/08	04/07/08	04/07/08
April Quarterly	—Waived—		
July Quarterly	06/30/08	07/15/08	07/15/08
Committees Involved in *Only* the Special General (03/08/08), Must File			
Pre-General	02/17/08	02/22/08	02/25/08
Post-General	03/31/08	04/07/08	04/07/08
April Quarterly	—Waived—		
July Quarterly	06/30/08	07/15/08	07/15/08

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: December 11, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–24296 Filed 12–14–07; 8:45 am]

BILLING CODE 6715–01–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 website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2008.

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

1. Independent Bancshares, Inc. Employee Stock Ownership Plan; to acquire 26.12 percent of the voting shares of Independent Bancshares, Inc., and thereby indirectly acquire voting shares of Community Spirit Bank, all of Red Bay, Alabama, and Spirit Bancshares, Inc., and Spirit Bank, both of Belmont, Mississippi.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Carroll Financial Services, Inc., Huntingdon, Tennessee; to acquire 100

percent of the voting shares of Bradford Bancshares, Inc., and thereby indirectly acquire voting shares of The Bank of Bradford, both of Bradford, Tennessee.

2. First Banks, Inc., St. Louis, Missouri; to acquire an additional 1.21 percent, for a total of 24.99 percent, of the voting shares of Community West Bancshares, and thereby indirectly acquire additional voting shares of Community West Bank, National Association, both of Goleta, California.

C. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to retain 6.04 percent of the voting shares of Valley Capital Bank, N.A., Mesa, Arizona.

Board of Governors of the Federal Reserve System, December 12, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–24314 Filed 12–14–07; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[PBS–N02]

Notice of Availability of the Draft Environmental Assessment and Wetland Involvement for the Transformation of Facilities and Infrastructure for the Non-Nuclear Production Activities Conducted at the National Nuclear Security Administration's Kansas City Plant at Kansas City, MO

AGENCIES: General Services Administration (GSA).

ACTION: Correction.

SUMMARY: GSA published a notice in the **Federal Register** at 72 FR 69690 on Monday, December 10, 2007, concerning the National Nuclear Security Administration's Kansas City Plant at Kansas City, MO. The document contained an incorrect state abbreviation and date format.

DATES: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Diedra Wingate at (202) 501–4755, GSA, Regulatory Secretariat.

Corrections

In the notice document FR Doc. E7–23843 on page 69690 make the following corrections:

In the first column, the last line of the notice title ''Kansas City, MI'' should read ''Kansas City, MO''. In the second column, under the heading **DATES**, in the third line, ''Monday, January 14th'', should read ''Monday, January 14, 2008''.

Diedra Wingate,

Regulatory Secretariat.

[FR Doc. E7–24354 Filed 12–14–07; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Expert Meeting on Disease Management Outcomes Measurement

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (HHS/ASPE) Expert Meeting on Disease Management Outcomes Measurement. The objective of the meeting is to convene a panel of experts from government, academia, and private industry to discuss measurement of the impact of disease management on health outcomes and costs of care, with a focus on potential for public sector programs.

DATES: Wednesday, January 16, 2008, from 9 a.m. to 5 p.m. Eastern Time.

ADDRESSES: The Expert Meeting will be held at 1200 South Hayes Street, Room 4204, Arlington, VA 22202–5050. Telephone: (703) 413–1100. Registration procedures are described in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Adelle Simmons, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Washington, DC 20201. Telephone: (202) 690–5924.

SUPPLEMENTARY INFORMATION:

I. Background

In the face of increasing health care costs, evidence of the need for system-wide health care quality improvement, and an aging population, disease management seems an intuitively appealing way to improve the coordination and quality of care, and ultimately improve health outcomes. In broad terms, disease management refers to a system of coordinated health care interventions and communications to help patients address chronic health conditions. Commercial health plans and large employers are embracing this strategy, and public purchasers of health care services including the Centers for Medicare and Medicaid Services (CMS) have implemented demonstration programs to evaluate disease management for certain conditions.

Questions about the effectiveness of disease management remain, in part, because the evaluation methods of vendors of large, population-based programs often lack scientific validity. Conversely, vendors often argue that scientifically credible approaches, like a randomized controlled experiment that the Medicare Health Support pilot uses, are not feasible for routine operation. Thus, the lack of universally accepted yet feasible evaluation methods are a major obstacle to adopting and improving disease management, because potential purchasers of such programs find it hard to identify the best program design and to monitor its success. A primary goal of this meeting is to consider the variety of disease management programs and identify strategies to improve the assessment of their impact on individuals with multiple chronic conditions.

II. Registration

The meeting is open to the public, and pre-registration is encouraged. Seating capacity is limited, so registration will be accepted on a first-come, first-served basis. Registration can be completed by sending an e-mail message to Ms. Emily Taylor of the RAND Corporation at *etaylor@rand.org* (The RAND Corporation is the Contractor to HHS/ASPE to provide logistical support for the Expert Meeting.) To register by telephone, contact Ms. Taylor at (703) 413–1100 ext. 5793.

The following information must be provided when registering: Name, Company/Organization, and address. A RAND Corporation staff member will confirm registrations by mail, e-mail, or fax.

Note: In the event that the meeting must be canceled due to inclement weather, the meeting will be held at a later date, and registrants will be notified by RAND.

III. Special Accommodations

Individuals who are hearing- or visually-impaired and have special requirements or a condition that requires special assistance must request accommodation when registering for the meeting in order to ensure that accommodations will be made.

Dated: December 12, 2007.

Mary M. McGeein,

Principal Deputy Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

[FR Doc. 07–6057 Filed 12–14–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Patient-Oriented Research and Career Enhancement Award for Stem Cell Research.

Date: December 21, 2007.

Time: 9 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, 7192, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 10, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–6053 Filed 12–14–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Additional Consolidated Health Information (CHI) Health Information Technology Standards

AGENCY: Federal Health Architecture (FHA), Office of the National Coordinator for Health Information Technology (ONC).

ACTION: Notice: Additional Consolidated Health Informatics (CHI) Health Information Technology Standards.

SUMMARY: This notice identifies three (3) additional Consolidated Health Informatics (CHI) messaging and vocabulary standards (Multimedia, Allergy, and Disability and Assessments) adopted for use in Federal government health information technology systems. This work supplements the work to further the adoption of the first set of 5 standards adopted on March 21, 2003 and second set of 15 standards adopted on May 6, 2004, as published in the December 23, 2005 **Federal Register** (70 FR 76287).

The CHI initiative began in October 2001 as one of 24 E-Government initiatives included in the President's Management Agenda (PMA). The CHI collaborative worked to adopt Federal government-wide health information interoperability standards to be implemented by Federal agencies in order to enable the Fedral government to exchange electronic health information. By publication of this document, we are informing the public of the adoption of three new CHI standards, Multimedia, Allergy and Disability and Assessment (adoption reports available at: *http://www.hhs.gov/healthit/chiinitiative.html*).

CHI Adopted Standards

As a result of work completed in furtherance of CHI, the three new domain areas and associated clinical standards that have been adopted are noted in the individual standards adoption reports found at *http://www.hhs.gov/healthit/chiinitiative.html* and are summarized below:

1. *Multimedia Messaging Standard:*

• National Electrical Manufacturer's Association (NEMA) Digital Imaging and Communications in Medicine (DICOM℠) 2004 Standard and higher.

2. *Allergy Messaging and Vocabulary Standard:*

• Health Level Seven (HL7®) HL7® 2.4 and higher messaging standard allergy information segments.

• College of American Pathologists (CAP) Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®) for allergy type, severity and reaction codes.

• National Library of Medicine (NLM) RxNorm for brand name allergen code.

• Food and Drug Administration (FDA) Unique Ingredient Identifier (UNII) codes for ingredient name allergen code.

• Department of Veteran Affairs (VA) National Drug File-Reference Terminology (NDF-RT) for drug class allergen code.

• 3. *Disability and Assessments:*

• Regenstrief Institute, Inc LOINC® (Logical Observation Identifiers Names and Codes®) representation and codes for questions and answers on federally-required assessment forms;

• CHI-endorsed semantic vocabulary matches linked with the LOINC® assessment questions and answers; and

• HL7® v2.4 and higher messaging standard and the HL7® CDA (Clinical Document Architecture (CDA)) for exchanging standardized federally-required assessment content.

SUPPLEMENTARY INFORMATION: In 2006, the CHI initiative was transitioned to the Federal Health Architecture (FHA) under the Office of the National Coordinator for Health IT (ONC). Currently, the CHI standards are being coordinated with the public/private processes of Healthcare Information Technology Standards Panel (HITSP).

HITSP serves as a cooperative partnership between the public and private sectors for the purpose of achieving a widely accepted and useful set of standards specifically to enable and support widespread interoperability among healthcare software systems, as they will interact in a local, regional, and nationwide health information network.

CHI endorsement has been identified as one of the HITSP standards adoption criteria employed to adopt standards for the HITSP Interoperability Specifications. The HITSP Interoperability Specifications are developed to advance the national agenda for secure, interoperable health information systems. (Notice of Availability, 72 FR. 9339 (March 1, 2007).

Collection of Information Requirements

This notice does not impose information collection and recordkeeping requirements subject to

review the paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Impact Statement

We foresee this notice having the following indirect effects upon the public: This notice will result in indirect impacts for Federal contractors or potential contractors who may be involved in health information technology design, development, or evaluation. The Federal government will require all future federal health information acquisitions to be based on CHI standards when applicable and as permitted by law, whether system development occurs within the Agency or through use of contractor services.

FOR FURTHER INFORMATION CONTACT: Vish Sankaran—(202) 205–2761.

Authority: The E-Government Act of 2002 (Pub. L. 107–347) (H.R. 2458).

Dated: December 7, 2007.

Robert M. Kolodner,

National Coordinator for Health Information Technology, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–6058 Filed 12–14–07; 8:45 am]

BILLING CODE 4150–45–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Pantex Plant, Amarillo, TX, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Pantex Plant, Amarillo, Texas, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Pantex Plant.

Location: Amarillo, Texas.

Job Titles and/or Job Duties: Production workers, technicians, including radiography, guards, physical plant, maintenance, administrative and support staff, contractors, and Atomic Energy Commission staff.

Period of Employment: January 1, 1950 through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: December 10, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–24427 Filed 12–14–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30–Day–08–0338]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S.—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The oral use of smokeless tobacco (SLT) products represents a significant health risk which can cause cancer and a number of non-cancerous oral conditions, and can lead to nicotine addiction and dependence. Furthermore, SLT use is not a safe substitute for cigarette smoking. The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq., P. L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco (SLT) to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. This legislation also authorizes HHS to undertake research, and submit an annual report to Congress (as deemed appropriate) discussing the health effects of these ingredients in smokeless tobacco products. HHS has delegated responsibility for the implementation of this Act to CDC's Office on Smoking and Health (OSH). Respondents report the required information to CDC once per year according to Tobacco Ingredient and Nicotine Reporting instructions posted on the OSH Web site. Changes effective with this reinstatement relate to the redesign of the OSH Web site. There are no costs to respondents other than their time. The total estimated annualized burden hours are 18,843.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokeless Tobacco Manufacturers, Packagers, and Importers	11	1	1,713

Dated: December 10, 2007.

Maryam I. Daneshvar,

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

[FR Doc. E7–24316 Filed 12–14–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0210]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cigarette smoking is the leading preventable cause of premature death and disability in the United States. Each year more than 440,000 premature deaths occur as the result of smoking related diseases.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 et seq., Pub. L. 99–252) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and submit an annual report to Congress (as deemed appropriate) discussing the health effects of these ingredients in smokeless tobacco products. HHS has delegated responsibility for the implementation of this Act to CDC's Office on Smoking and Health (OSH). Respondents report the required information to CDC once per year according to Tobacco Ingredient and Nicotine Reporting instructions posted on the OSH web site. Changes effective with this reinstatement relate to the redesign of the OSH web site. There are no costs to respondents other than their time. The total estimated annualized burden hours are 930.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokeless Tobacco Manufacturers, Packagers, and Importers	143	1	6.5

Dated: December 10, 2007.

Maryam I. Daneshvar,

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

[FR Doc. E7–24323 Filed 12–14–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–0669]

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

Evaluation of State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description:

The ''State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases'' (NPAO) project was established by CDC to prevent and control obesity and other chronic diseases by supporting States in the development and implementation of nutrition and physical activity interventions, particularly through population-based strategies such as policy-level changes, environmental supports and the social marketing process. The goal of the programs in this project is to attain population-based behavior change such as increased physical activity and better dietary habits; this leads to a reduction in the prevalence of obesity, and ultimately to a reduction in the prevalence of chronic diseases.

Evaluation questions for ''State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases'' have been previously approved under OMB control no. 0920–0669, which is scheduled to expire January 31, 2008. CDC seeks OMB approval to reinstate the evaluation in 2008 with changes, in response to feedback from users and stakeholders based on experience with the previously

approved questions. The evaluation is designed to focus on the recipient activities as outlined in the original funding announcement:

- Capacity building.
- Collaboration.
- Planning.
- Monitoring the burden of obesity.
- Intervention.
- Evaluation.

Within each of these areas, the plan identifies specific evaluation questions that have been chosen for study. The evaluation questions are asked of the funded states via a web-based data collection system supported by an electronic database every 6 months during the funding cycle. The project will continue to be conducted over a 3-year period.

There are no costs to respondents except 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)
States participating in NPAO	28	2	12	672
Total				672

Dated: December 11, 2007.

Maryam I. Daneshvar,

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

[FR Doc. E7–24325 Filed 12–14–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0459]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 3 on Test for Particulate Contamination: Subvisible Particles General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 3: Test for Particulate Contamination: Subvisible Particles General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Test for Particulate Contamination: Subvisible Particles General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This is the third annex to the core Q4B guidance, which was made available in draft in the **Federal Register** of August 8, 2006 (71 FR 45059).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by February 15, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance*: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 3542, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–435–5681.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan,

and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In November 2007, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 3: Test for Particulate Contamination: Subvisible Particles General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Test for Particulate Contamination: Subvisible Particles General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: December 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24431 Filed 12–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0458]

International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 2 on Test for Extractable Volume of Parenteral Preparations General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 2: Test for Extractable Volume of Parenteral Preparations General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Test for Extractable Volume of Parenteral Preparations General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This is the second annex to the core Q4B guidance, which was made available in draft in August 2006 (71 FR 45059, August 8, 2006).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by February 15, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding the guidance*: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 3542, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–20), Food and Drug

Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–435–5681.

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ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In November 2007, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 2: Test for Extractable Volume of Parenteral Preparations General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Test for Extractable Volume of Parenteral Preparations General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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III. Electronic Access

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Dated: December 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24434 Filed 12–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0330]

Guidance for Industry and Food and Drug Administration Review Staff: Collection of Platelets by Automated Methods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry and FDA Review Staff: Collection of Platelets by Automated Methods,'' dated December 2007. The guidance document provides to blood establishments and FDA staff revised recommendations for the collection of Platelets by automated methods (plateletpheresis). The guidance is intended to help blood establishments ensure donor safety and the safety, purity, and potency of Platelets collected by an automated blood cell separator device. For the purpose of this document, Platelets collected by automated methods will be referred to by the product name ''Platelets, Pheresis.'' The document contains recommendations for appropriate criteria for a biologics license application or supplement for manufacturing Platelets, Pheresis. The guidance announced in this notice finalizes the draft guidance of the same title dated September 2005, and supersedes the guidance entitled ''Revised Guideline for the Collection of Platelets, Pheresis,'' dated October 1988.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See

the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry and FDA Review Staff: Collection of Platelets by Automated Methods,'' dated December 2007. The guidance provides to blood establishments and FDA staff revised recommendations for the collection of Platelets by automated methods (plateletpheresis). In recent years, many improvements have been made in automated blood cell separator technology, platelet storage stability, and blood cell counting methods. Automated blood cell separator devices are now capable of various plateletpheresis collection procedures including, but not limited to, collection of double and triple platelet components obtained during a single procedure; use of in-process leukocyte reduction; collection of concurrent plasma components; and collection of concurrent Red Blood Cell components. This guidance replaces the draft guidance of the same title, and supersedes the guidance entitled ''Revised Guideline for the Collection of Platelets, Pheresis,'' dated October 1988.

In the **Federal Register** of October 3, 2005 (70 FR 57609), FDA announced the availability of the draft guidance of the same title dated September 2005. FDA received numerous comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes includes: (1) Revised recommendations for donor selection and management, (2) revised recommendations for collection performance qualification criteria, and (3) revised recommendations on quality control monitoring. The guidance announced in this notice finalizes the draft guidance dated September 2005.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 211 (21 CFR part 211), subpart J (Records and Reports) have been approved under OMB control number 0910–0139; the collections of information in part 606 (21 CFR part 606), subpart I (Records and Reports) have been approved under OMB control numbers 0910–0116 and 0910–0458; the collections of information in §§ 606.100(b) and (c), 606.110(a), 606.121, 606.122, 21 CFR 640.25, and 21 CFR 640.27 have been approved under OMB control number 0910–0116; the collections of information in §§ 211.22, 211.80, 211.100(b), and 211.160 have been approved under OMB control number 0910–0139; the collections of information in 21 CFR 610.2 have been approved under OMB control number 0910–0206; and the collections of information in 21 CFR 601.12 and 610.60 have been approved under OMB control number 0910–0338.

III. Comments

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

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: December 7, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–24385 Filed 12–14–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects [Section 3506 (c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13], the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on (a) whether the agency needs to collect the proposed information to properly perform its functions and whether the information has any practical utility; (b) whether the agency's estimate of the burden of the proposed collection of information is accurate; (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 for respondents (*e.g.*, by using automated collection techniques or other forms of information technology).

Proposed Project: Ryan White HIV/AIDS Program Part F Dental Services Report (OMB No. 0915–0151)—Extension

The Dental Reimbursement Program (DRP) and the Community Based Dental Partnership Program under Part F of the Ryan White HIV/AIDS Program offer funding to accredited dental education programs to support the provision of

oral health services for HIV-positive individuals. Institutions eligible for these programs are accredited schools of dentistry, post-doctoral dental education programs and dental hygiene programs.

The DRP Application is the Dental Services Report that schools and programs use to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV, or to report annual program data. Awards are authorized under section 2692(b) of the Public Health Service Act (42 U.S.C. § 300ff–111(b)). The Dental Services Report collects data in four different areas: program information, patient demographics and services, funding, and training. It also requests applicants to provide narrative descriptions of their services and facilities, as well as their links and collaboration with community-based providers of oral health services.

The primary purpose of collecting this information annually is to verify eligibility and determine reimbursement amounts for DRP applicants, as well as to document the program accomplishments of Community-Based Dental Partnership Program grant recipients. This information also allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating patients with HIV, (2) the number and characteristics of clients who receive HIV/AIDS program-supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to patients with HIV, and (5) the scope of grant recipients' community-based collaborations and training of providers. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the Dental Services Report is critical for HRSA, State and local grantees, and individual providers, to help assess the status of existing HIV-related health service delivery systems.

The reporting burden for reviewing the Dental Services Report Instructions and completing the Report is estimated as:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Dental Services Report	80	1	80	20	1600

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 11, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–24348 Filed 12–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Part C HIV Early Intervention Services Grant

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of Noncompetitive Program Expansion Supplemental Award.

SUMMARY: HRSA will be providing temporary critical HIV medical care and treatment services through Chase Brexton Health Services to avoid a disruption of HIV clinical care to homeless populations in the Baltimore, Maryland, area.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Chase Brexton Health Services, Baltimore, Maryland.

Amount of the Award: $73,125 (initial three month supplement) and $300,000 (anticipated second 12 month supplement) to ensure ongoing clinical services to the target population.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

CFDA Number: 93.918.

Project Period: The first period of supplemental support is from September 30, 2007, through December 31, 2007. The anticipated second period of supplemental support will be January 1, 2008, through December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Maria Rios, M.D, via e-mail: *mrios@hrsa.gov,* or via telephone: 301–443–0493.

Justification for the Exception to Competition

Funding critical HIV medical care and treatment services for homeless populations in Baltimore, MD area will be continued through a noncompetitive program expansion supplement to an existing grant award to Chase Brexton Health Services. This is a temporary award made because the previous grant recipient servicing this population is unable to satisfactorily meet legislative and program requirements. Chase Brexton, a currently funded Ryan White HIV/AIDS Program Part C grantee, is the best qualified and geographically positioned grantee able to provide the necessary continuity of HIV care and treatment for the targeted population. The initial supplemental funding will provide support for three months. Based on satisfactory performance, continued need, and availability of funds, a second and final supplemental award for these services will be awarded for twelve months. Further funding beyond December 31, 2008, for this service area will be competitively awarded during the next Part C HIV Early Intervention Services (EIS) competing application process. The next available Part C EIS open competing cycle will occur in fiscal year 2009.

Dated: December 7, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–24437 Filed 12–14–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Procurement Officer; Submission for Review; Information Collection Request for Various Contract Related Forms and Regulation on Agency Protests

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Notice; 30-day notice of information collections under review: Various contract related forms and Regulation on Agency Protests, OMB Control Number 1600–0002 and 1600–0004.

SUMMARY: The Department of Homeland Security (DHS) will submit the following proposed information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995: 1600–0002 and 1600–0004. The

information collection was previously published in the **Federal Register** on August 23, 2007, at 72 FR 48289–48291, allowing for OMB review and a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 16, 2008. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security [Office of the Chief Procurement Officer], and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

The Office of Management and Budget is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by calling Kathy Strouss, Office of the Chief Procurement Officer, Department of Homeland Security, Washington, DC 20528; telephone (202) 447–5300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Analysis

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation.

Title: Various contract related forms (DHS Forms 0700–01 through 0700–04).

OMB No.: 1600–0002.

Frequency: On occasion.

Affected Public: Businesses or other for profits and individuals and households.

Estimated Number of Respondents: 7,101 respondents.

Estimated Time Per Respondent: 1 hour per response.

Total Burden Hours: 7,101.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Description: The DHS, Office of the Chief Procurement Officer requires a renewal of an existing OMB Control Number 1600–0002 granted in September 2004 on these four acquisition forms. The information collections under the Homeland Security Acquisition Regulation (HSAR) are necessary in order to implement applicable parts of the Federal Acquisition Regulation (FAR) for administering public contracts for supplies and services.

Analysis

Agency: Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation.

Title: Regulation on Agency Protests.

OMB No.: 1600–0004.

Frequency: On occasion.

Affected Public: Businesses or other for profits and individuals and households.

Estimated Number of Respondents: 50 respondents.

Estimated Time Per Respondent: 2 hours per response.

Total Burden Hours: 100 hours.

Total Burden Cost: (capital/startup): None.

Total Burden Cost: (operating/maintaining): None.

Description: The DHS, Office of the Chief Procurement Officer requires a renewal of an existing OMB Control Number 1600–0004, granted in September 2004 for the regulation on agency protests. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency level protests.

Scott Charbo,

Chief Information Officer.

[FR Doc. E7–24295 Filed 12–14–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 07–94]

Re-Accreditation and Re-Approval of Pan Pacific Surveyors, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Pan Pacific Surveyors, Inc., of Wilmington, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Pan Pacific Surveyors, Inc., 444 Quay Ave., Suite #7, Wilmington, California 90744, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of Pan Pacific Surveyors, Inc., as a commercial gauger and laboratory became effective on September 13, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–24394 Filed 12–14–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 07–93]

Re-Accreditation and Re-Approval of Inspectorate America Corp., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corp., of Bellingham, Washington, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Inspectorate America Corp., 4041 Home Road, Suite A, Bellingham, Washington 98226, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp. gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of Inspectorate America Corp., as a commercial gauger and laboratory became effective on March 14, 2007. The next triennial inspection date will be scheduled for March 2010.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, PhD, or Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–24395 Filed 12–14–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 07–92]

Re-Accreditation and Re-Approval of King Inspection and Testing, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of King Inspection and Testing, Inc., of Carson, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, King Inspection and Testing, Inc., 1300 E. 223rd Street, #401, Carson, California 90745, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml*.

DATES: The re-approval of King Inspection and Testing, Inc., as a commercial gauger and laboratory became effective on September 15, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 6, 2007.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E7–24396 Filed 12–14–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Customs Brokers User Fee Payment for 2008

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual fee of $138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by February 15, 2008. Customs and Border Protection (CBP) announces this date of payment for 2008 in accordance with the Tax Reform Act of 1986.

DATES: Payment of the 2008 Customs Broker User Fee is due February 15, 2008.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Compliance Branch, Trade Policy and Programs, (202) 863–6544.

SUPPLEMENTARY INFORMATION:

Background

CBP Dec. 07–01 amended section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007 an annual user fee of $138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

The Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. See 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, ''Geographical Boundaries of Customs Brokerage, Cartage and Lighterage Districts'' published in the **Federal Register** on September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6

U.S.C. 101 *et seq.*, (Pub. L. 107–296) and Treasury Department Order No. 100–16 (see Appendix to 19 CFR part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2008, the due date for payment of the user fee is February 15, 2008. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on or about the twentieth of January of each year.

Dated: December 12, 2007.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E7–24435 Filed 12–14–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–105]

Compliance Inspection Report—Mortgagee's Assurance of Completion

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Compliance Inspection Report is used by staff and private inspectors and appraisers. The Mortgagee's assurance of Completion is used by mortgage companies for establishing escrow for incomplete repairs or construction. HUD staff review and approve these forms and use them in monitoring and training.

DATES: *Comments Due Date:* January 16, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–0189) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Compliance Inspection Report—Mortgagee's Assurance of Completion.

OMB Approval Number: 2502–0189.

Form Numbers: HUD–92051 and HUD–92300.

Description of the Need for the Information and Its Proposed Use: The Compliance Inspection Report is used by staff and private inspectors and appraisers. The Mortgagee's Assurance of Completion is used by mortgage companies for establishing escrow for incomplete repairs or construction. HUD staff review and approve these forms and use them in monitoring and training.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	37,440	16.64		0.248		154,667

Total Estimated Burden Hours: 154,667.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 10, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 07–6054 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–07]

Revocation and Redelegation of Fair Housing Act Complaint Processing Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority for Fair Housing Act complaint processing made within the Offices of the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO under the Fair Housing Act and redelegates this authority to FHEO region and headquarters staff.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In a March 30, 1989 notice (54 FR 13121), the Secretary of HUD delegated the authority to enforce the Fair Housing Act (42 U.S.C. 3601 *et seq.*) to the Assistant Secretary for FHEO and the General Counsel, among other Department officials. In this notice, the Assistant Secretary for FHEO revokes the August 4, 2003 (effective July 25, 2003, 68 FR 45846) and July 6, 2005 (effective June 23, 2005, 70 FR 38971) redelegations of authority for Fair Housing Act complaint processing made within the Offices of the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO under the Fair Housing Act and redelegates this authority to FHEO region and headquarters staff. Accordingly, the Assistant Secretary for FHEO retains and redelegates this authority as provided in this notice.

Section A. Authority Retained and Redelegated

The Assistant Secretary for FHEO retains and redelegates the authority for Fair Housing Act complaint processing, as provided in 24 CFR part 103, to the General Deputy Assistant Secretary for FHEO.

The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority under 24 CFR part 103, subparts A, B, D (with the exception of the filing of a Secretary-initiated complaint under 24 CFR 103.200(b) and 24 CFR 103.204(a)), E, and F, to the Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement; Director of the Office of Systemic Investigations and FHEO Region Directors.

The General Deputy Assistant Secretary for FHEO further retains and redelegates the authority, under 24 CFR part 103, subpart C, to the Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement and FHEO Region Directors.

The General Deputy Assistant Secretary for FHEO further retains and redelegates the authority under 24 CFR 103.510(a) to the Deputy Assistant Secretary for Enforcement and Programs and Director of the Office of Enforcement.

The General Deputy Assistant Secretary for FHEO further retains and redelegates the authority under 24 CFR 103.510(d) to the Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement; Director of the Office of Systemic Investigations and FHEO Region Directors.

The Assistant Secretary for FHEO retains and redelegates to the General Deputy Assistant Secretary for FHEO the authority to reconsider no cause determinations. The General Deputy Assistant Secretary for FHEO further retains and redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs and Director of the Office of Enforcement.

Section B. Authority To Further Redelegate

The General Deputy Assistant Secretary may further redelegate the authorities provided in Section A of this notice. The Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement; Director of the Office of Systemic Investigations and FHEO Region Directors may not redelegate the authorities provided in Section A of this notice.

Section C. Authority Revoked

All prior redelegations of authority for Fair Housing complaint processing made within the Offices of the Assistant Secretary for FHEO and the General Deputy Assistant Secretary are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Dated: May 31, 2007.

Cheryl L. Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24336 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–08]

Revocation and Redelegation of Administrative Authority for Title I, Section 109 of the Housing and Community Development Act of 1974

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority from the Assistant Secretary for FHEO under Title I, Section 109 of the Housing and Community Development Act of 1974, and redelegates certain authority, to FHEO headquarters and Region staff.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By previous delegation, the Secretary of HUD delegated to the Assistant Secretary of FHEO, with certain exceptions, the authority to act under Title I, Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309). (*See* 41 FR 15359, April 12, 1976.) The provisions of Section 109 are implemented through HUD's regulations in 24 CFR part 6. (*See* also 24 CFR 6.3, in which the ''Responsible Official'' is defined as the Assistant Secretary for FHEO (or the Assistant Secretary's designee)).

On August 4, 2003, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) redelegated the Assistant Secretary's authority under Section 109, as provided in 24 CFR 6.10 and 6.11, to the General Deputy Assistant Secretary of FHEO. The General Deputy Assistant Secretary for FHEO further redelegated these authorities to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, and to the FHEO Hub Directors. Since then, FHEO has created an Office of Systemic Investigations. Further, the FHEO Hub Directors' titles have been changed to FHEO Region Directors.

Accordingly, in this redelegation, the Assistant Secretary for FHEO revokes the August 4, 2003 and all other previous delegations and retains and redelegates the authority to act as the ''Responsible Official'' under Title I Section 109 of the Housing and Community Development Act of 1974, and its implementing regulations subject to certain exceptions.

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with noted exception, redelegates to the General Deputy Assistant Secretary for FHEO the

authority to act as the ''Responsible Official'' under Section 109, only as provided in 24 CFR 6.10 and 6.11. This includes the authority to further redelegate. The General Deputy Assistant Secretary for FHEO retains and, with noted exception, further redelegates these authorities to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, FHEO Region Directors and the Director of the Office of Systemic Investigations.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary in this notice does not include the authority to issue or to waive regulations. The authority delegated by the General Deputy Assistant Secretary does not include the authority to further redelegate. As to the FHEO Region Directors, the authority delegated additionally does not include the authority under 24 CFR 6.11(c) to review letters of finding.

Section C. Delegations of Authority Revoked

All prior redelegations of the authority within the Office of the Assistant Secretary for FHEO under Section 109 of the Housing and Community Development Act of 1974 are revoked.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24339 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–04]

Revocation and Redelegation of Authority Under the Age Discrimination Act of 1975

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under the Age Discrimination Act of 1975, and retains and redelegates this authority, with noted exceptions, to the General Deputy Assistant Secretary for FHEO, who in turn redelegates certain authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and FHEO Region Directors.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In a previous delegation, the Secretary delegated to the Assistant Secretary for FHEO the authority to act under the Age Discrimination Act of 1975. (68 FR 43156, July 21, 2003). Since then, FHEO the title of the Hub Directors has been changed to FHEO Region Directors. In this notice, the Assistant Secretary for FHEO revokes prior redelegations and retains and, with noted exceptions, redelegates authority under the Age Discrimination Act to the General Deputy Assistant Secretary for FHEO. The General Deputy Assistant Secretary for FHEO, in turn, redelegates certain authority to certain FHEO headquarters and region staff.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with noted exceptions, redelegates to the General Deputy Assistant Secretary for FHEO the authority to act under the Age Discrimination Act of 1975. This includes the authority to further redelegate authority. The General Deputy Assistant Secretary for FHEO retains and, with noted exceptions, redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, and the FHEO Region Directors.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary does not include the authority to issue or waive regulations. The authority redelegated by the General Deputy Assistant Secretary does not include the authority to determine that voluntary compliance cannot be achieved pursuant to 24 CFR 146.39(d)(1), the authority to terminate financial assistance under 24 CFR 146.39(a)(1), the authority to refer to the Department of Justice or secure compliance by other means pursuant to 24 CFR 146.39(a)(2), the authority to defer new federal financial assistance under 24 CFR 146.39(e), or authority to further redelegate.

Section C. Authority Revoked

All prior redelegations of authority made within the office of the Assistant Secretary for FHEO under the Age Discrimination Act of 1975 are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24317 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–03]

Revocation and Redelegation of Authority Under Section 561 of the Housing and Community Development Act of 1987

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the office of the Assistant Secretary for FHEO under Section 561 of the Housing and Community Development Act of 1987, the Fair Housing Initiatives Program (FHIP), and retains and, with noted exception, redelegates this authority to the General Deputy Assistant Secretary for FHEO, who retains and further

redelegates certain authority to FHEO headquarters and region office staff.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone number (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Fair Housing Initiatives Program contained in the Housing and Community Development Act of 1987, 42 U.S.C. 3616a, authorizes the Secretary to provide funding to state and local governments or their agencies, public or private non-profit organizations or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. This enables the recipients to carry out activities designed to obtain enforcement of the rights granted by the federal Fair Housing Act or by substantially equivalent state or local fair housing laws. This also enables the recipients to carry out education and outreach activities designed to inform the public of their rights and obligations under such federal, state or local laws prohibiting discrimination. By regulation, the Secretary has delegated to the Assistant Secretary for FHEO the authority to administer the Fair Housing Initiatives Program (24 CFR 125.104(a)). By previous redelegation, the Assistant Secretary for FHEO redelegated certain authority under the FHIP (68 FR 45843). Since that time, the FHEO Hub Directors' title has been changed to FHEO Region Directors. Through this notice, the Assistant Secretary for FHEO revokes all previous redelegations under FHIP within the Office of Fair Housing and Equal Opportunity, and retains and, with noted exception, redelegates authority to certain FHEO headquarters and region staff.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with certain exceptions, noted in Section B, redelegates to the General Deputy Assistant Secretary for FHEO the authority to act under Section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, February 5, 1988). This includes authority to further redelegate this authority.

The General Deputy Assistant Secretary, in turn, retains and with exceptions noted in Section B herein redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs and the FHEO Region Directors.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary for FHEO does not include the authority to issue or waive regulations, including authority to waive portions of the FHIP regulation pursuant to 24 CFR 125.106.

The authority redelegated in this notice by the General Deputy Assistant Secretary for FHEO, does not include the authority to determine the appropriate reporting and record maintenance, as provided in 24 CFR 125.104(e).

Section C. Authority Revoked

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO regarding Section 561 of the Housing and Community Development Act of 1987, the Fair Housing Initiatives Program, are revoked, including the August 4, 2003 redelegation published at 68 FR 45843.

Section D. Authority To Redelegate

The authority redelegated from the General Deputy Assistant Secretary, to the Deputy Assistant Secretary for Enforcement and Programs, FHEO Region Directors and the Director of the Office of Programs may not be further redelegated.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl L. Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24319 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–01]

Revocation and Redelegation of Administrative Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under Section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulations, and redelegates certain authority as set forth herein to the General Deputy Assistant Secretary, who in turn redelegates certain authority as set forth herein to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, Director of the Office of Systemic Investigations and the FHEO Region Directors.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001; telephone number (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Secretary has delegated to the Assistant Secretary for FHEO the authority to act as ''responsible civil rights official'' and ''reviewing civil rights official'' under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations in 24 CFR part 8. The Assistant Secretary for FHEO redelegated the authority to act as the ''responsible civil rights official'' to the General Deputy Assistant Secretary for FHEO, who in turn, redelegated that authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and the FHEO Hub Directors. The Assistant Secretary for FHEO also redelegated the authority to act as ''reviewing civil rights official,'' in accordance with 24 CFR 8.56(h), to

the General Deputy Assistant Secretary for FHEO, who in turn further redelegated that authority to the Deputy Assistant Secretary for Enforcement and Programs and the Director of the Office of Enforcement. Since then, FHEO has created an Office of Systemic Investigations. Further, the FHEO Hub Directors' titles have been changed to FHEO Region Directors. The Assistant Secretary for FHEO therefore now revokes those prior redelegations and retains and redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with limited exceptions set forth in Section B, redelegates the authority to act as the ''responsible civil rights official'' and the ''reviewing civil rights official'' to the General Deputy Assistant Secretary for FHEO, including the authority to redelegate that authority. The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority to act as the ''responsible civil rights official'' to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Systemic Investigations, Director of the Office of Enforcement and the FHEO Region Directors. The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority to act as ''reviewing civil rights official,'' in accordance with 24 CFR 8.56(h), to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and the Director of the Office of Systemic Investigation.

Section B. Authority Excepted

The authority redelegated from the Assistant Secretary for FHEO does not include the authority to issue or waive regulations. The authority redelegated from the General Deputy Assistant Secretary for FHEO does not include the authority, under 24 CFR 8.57(a) and (e)(1), to determine that compliance cannot be effectuated through informal resolution, to terminate or refuse to grant or continue federal financial assistance for noncompliance under 24 CFR 8.57(c) and does not include the authority to further redelegate.

Section C. Authority Revoked

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under section 504 of the Rehabilitation Act of 1973 are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24324 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–02]

Revocation and Redelegation of Administrative Authority for Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all redelegations of authority under Title VI of the Civil Rights Act of 1964 made within the Office of the Assistant Secretary for FHEO and retains and redelegates this authority to act as the ''responsible Department official,'' with noted exceptions, to the General Deputy Assistant Secretary, who in turn, retains and redelegates this authority, with noted exceptions to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, and the FHEO Region Directors.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001; telephone number (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By previous delegation, the Secretary delegated to the Assistant Secretary for Fair Housing and Equal Opportunity all authority to act as the ''responsible Department official'' in all matters relating to the carrying out of the requirements under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and its implementing regulations (24 CFR part 1) except authority pertaining to tenant selection plans under 24 CFR 1.4(b)(2)(ii). (68 FR 43154, July 21, 2003). By previous redelegation (68 FR 45847, August 4, 2003), the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) redelegated this authority, with certain exceptions, to the General Deputy Assistant Secretary, who in turn, redelegated certain authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, and the FHEO Hub Directors. Since then, FHEO has created the Office of Systemic Investigations. Further, the FHEO Hub Directors' titles have been changed to FHEO Region Directors.

Accordingly, in this redelegation, the Assistant Secretary for FHEO revokes the August 4, 2003 and all other previous delegations and redelegates the authority to act as the ''responsible Department official'' under Title VI of the 1964 Civil Rights Act, and its implementing regulations and now retains and redelegates this authority as follows:

Section A. Authority Redelegated

With certain exceptions noted in Section B, the Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority, under Title VI as provided in 24 CFR part 1, to act as the ''responsible Department official''' in matters delegated to the Assistant Secretary for FHEO, including the authority to further redelegate this authority. The General Deputy Assistant Secretary for FHEO retains and further redelegates this authority, with noted exceptions in Section B, to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, Director of the Office of Systemic Investigations and the FHEO Region Directors.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary in this notice does not include the authority to issue or to waive regulations. The authority redelegated by the General Deputy Assistant Secretary for FHEO does not include the authority under 24 CFR 1.8(a) to refer to the Department of Justice (DOJ) unresolved findings of non-compliance or seek other means of compliance, the authority under 24 CFR 1.8(c) to terminate, refuse to grant, or refuse to continue federal financial assistance, the authority under 24 CFR 1.8(d) to determine that compliance

cannot be effectuated by informal means and does not include authority to further redelegate.

Section C. Delegations of Authority Revoked

All prior redelegations of authority under Title VI of the Civil Rights Act of 1964 made by the Assistant Secretary for FHEO are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24328 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–05]

Revocation and Redelegation of Authority for the Civil Rights Related Program Requirements of HUD Programs

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO regarding civil rights related program requirements of HUD programs to FHEO staff and retains and redelegates this authority, with noted exceptions, to the General Deputy Assistant Secretary of FHEO, Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs, and the FHEO Region Directors.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By previous delegation, the Secretary delegated to the Assistant Secretary for Fair Housing and Equal Opportunity certain authority regarding the Department's civil rights related program requirements (60 FR 14294, March 16, 1995). By previous redelegation (68 FR 45844, August 4, 2003), the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) redelegated the Assistant Secretary's authority regarding civil rights related program requirements of HUD programs to the General Deputy Assistant Secretary, who in turn, redelegated certain authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs, and the FHEO Hub Directors. Since then, the FHEO Hub Directors' titles were changed to FHEO Region Directors. The Assistant Secretary for FHEO, through this notice, retains and redelegates the authority regarding civil rights related program requirements of HUD programs to the General Deputy Assistant Secretary for FHEO, Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and the FHEO Region Directors.

Accordingly, the Assistant Secretary for FHEO delegates authority as follows:

Section A. Authority Redelegated

With certain exceptions noted in Section B, the Assistant Secretary for FHEO retains and redelegates to the General Deputy Assistant Secretary for FHEO all authority delegated to the Assistant Secretary for FHEO regarding civil rights related program requirements of HUD programs. This includes the authority to further redelegate. The General Deputy Assistant Secretary retains and redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs, and the FHEO Region Directors.

Section B. Exceptions to Redelegation

The authority delegated by the Assistant Secretary does not include the authority to issue or to waive regulations. The Authority redelegated from the General Deputy Assistant Secretary does not include the authority to further redelegate.

Section C. Authority Revoked

All prior redelegations of authority made by the Assistant Secretary for FHEO regarding civil rights related program requirements of HUD programs made within the Office of the Assistant Secretary for FHEO are revoked, including, but not limited to, the redelegations at 68 FR 45844 published on August 4, 2003.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl L. Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24331 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–06]

Revocation and Redelegation of Fair Housing Assistance Program Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under the Fair Housing Assistance Program with the exception of redelegation of authority to the FHEO Region Directors, as set forth in 24 CFR 115.101(b). The Assistant Secretary for FHEO redelegates the authority in 24 CFR 115.101(b) and other authority, as set forth in this notice, to the General Deputy Assistant Secretary.

DATES: *Effective Date:* May 31, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Through regulation (24 CFR 115.101(a)), the

Secretary delegated the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115, to the Assistant Secretary for FHEO. Also through regulation (24 CFR 115.101(b)), the Assistant Secretary for FHEO retained and redelegated this authority to each Director of a Fair Housing Enforcement Center (now FHEO Region Directors). In this notice, the Assistant Secretary for FHEO retains and redelegates this authority to the General Deputy Assistant Secretary for FHEO and clarifies the change in title from ''Fair Housing Enforcement Center Directors,'' in 24 CFR Part 115, and ''FHEO Hub Directors'' to ''FHEO Region Directors.''

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and redelegates the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115 subparts A, B and C, to the General Deputy Assistant Secretary for FHEO.

The General Deputy Assistant Secretary retains and redelegates the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115 subparts A, B and C, with the exception of making final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification in subpart B, to the Deputy Assistant Secretary for Enforcement and Programs and FHEO Region Directors.

Section B. Clarification

The redelegation of authority from the Assistant Secretary for FHEO to the Fair Housing Enforcement Center Directors, as set forth in 24 CFR 115.101(b) remains intact with the exception of the change in nomenclature from Fair Housing Enforcement Center Directors to FHEO Region Directors.

Section C. Authority Excepted

The authority redelegated in this notice does not include the authority to issue or waive regulations.

Section D. Authority To Further Redelegate

The General Deputy Assistant Secretary for FHEO may redelegate the authority provided in Section A of this notice. The Deputy Assistant Secretary for Enforcement and Programs and FHEO Region Directors may not redelegate the authority provided in Section A of this notice.

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO to administer the Fair Housing Assistance Program are revoked with the exception of the delegation of authority set forth in 24 CFR 115.101(b).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Dated: May 31, 2007.

Cheryl Ziegler,

General Deputy Assistant Secretary.

Editorial Note: This document was received at the Office of the Federal Register on December 12, 2007.

[FR Doc. E7–24333 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5168–D–09]

Revocation and Redelegation of Authority Under Section 3 of the Housing and Urban Development Act of 1968

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: Pursuant to 24 CFR 135.7, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) has been delegated authority under Section 3 of the Housing and Urban Development Act of 1968 and HUD's implementing regulations at 24 CFR part 135. In this document, the Assistant Secretary for FHEO retains those authorities and, with noted exceptions, redelegates them to the General Deputy Assistant Secretary for FHEO, who retains and further redelegates certain authorities to the Deputy Assistant Secretary for Enforcement and Programs. In addition, the Deputy Assistant Secretary for Enforcement and Programs retains these authorities and further redelegates limited authorities to each of the FHEO Region Directors. Pursuant to this notice, the Assistant Secretary for FHEO also revokes the redelegation of authority published in the **Federal Register** on August 3, 2003 (68 FR 45848), and any other prior redelegations of authority pertaining to Section 3 of the Housing and Urban Development Act of 1968.

DATES: *Effective Date:* November 21, 2007.

FOR FURTHER INFORMATION CONTACT: Bryan Greene, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5204, Washington, DC 20410–0001, telephone (202) 619–8046 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to 24 CFR 135.7, the Assistant Secretary for FHEO has been delegated all authority under Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and its implementing regulations, 24 CFR part 135. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; provided however, that the authority to issue rules and regulations pursuant to Section 3 is not redelegated. In this redelegation of authority, except for noted exceptions, the Assistant Secretary for FHEO redelegates this authority to the General Deputy Assistant Secretary for FHEO, who retains and further redelegates certain authorities to the Deputy Assistant Secretary for Enforcement and Programs. In addition, the Deputy Assistant Secretary for Enforcement and Programs retains and further redelegates limited authorities to each of the FHEO Region Directors.

Recently, the Assistant Secretary for FHEO has shifted the complaint processing from HUD Headquarters to each of HUD's regional offices. This redelegation reflects those changes.

Authority is redelegated as follows:

Section A. Authority Redelegated to General Deputy Assistant Secretary for FHEO

The Assistant Secretary for FHEO retains and, with certain noted exceptions, redelegates to the General Deputy Assistant Secretary for FHEO all authority under Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations. The authority redelegated does not include the authority to impose resolutions or sanctions in Section 3 complaint investigations pursuant to 24 CFR part 135.76(f)(2); or to issue rules, regulations or waivers pursuant to Section 3. This authority may be further redelegated to other FHEO employees.

Section B. Authority Further Redelegated to the Deputy Assistant Secretary for Enforcement and Programs

The General Deputy Assistant Secretary for FHEO retains and, with noted exceptions, redelegates to the Deputy Assistant Secretary for Enforcement and Programs the authority for Section 3 complaint processing, pursuant to 24 CFR part 135.76, and the authority for Section 3 complaint reviews, pursuant to 24 CFR part 135.74. The authority redelegated does not include the authority to impose resolutions or sanctions pursuant to 24 CFR 135.76(f)(2). This authority may be further redelegated to other FHEO employees.

Section C. Authority Further Redelegated to FHEO Region Directors

Subject to noted exceptions, the Deputy Assistant Secretary for Enforcement and Programs retains and redelegates to each of the FHEO Region Directors the authority for Section 3 complaint processing as provided in 24 CFR 135.76. The authority redelegated does not include the authority to review appeals to letters of determinations or appeals to resolutions; it also does not include the authority to impose resolutions or sanctions pursuant to 24 CFR 135.76(f)(2). This authority may not be further redelegated.

Section E. Prior Redelegated Authority Revoked

All previous redelegations of authority made within the Office of the Assistant Secretary for FHEO under Section 3 of the Housing and Urban Development Act of 1968, including the redelegation published in the **Federal Register** at 68 FR 45848 on August 3, 2003 are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 21, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

Cheryl L. Ziegler,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity

Bryan Greene,

Deputy Assistant Secretary for Enforcement and Programs.

[FR Doc. E7–24341 Filed 12–14–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–912–1640–PH; 08–08807; TAS: 14X1109]

Notice Public Meetings: Northeastern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Fiscal Year 2008 Meetings Locations and Times for the Northeastern Great Basin Resource Advisory Council.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below.

DATES AND TIMES: The RAC will meet three times in Fiscal Year 2008: On February 21, at the BLM Ely Field Office at 702 North Industrial Way, Ely, Nevada; on April 24, at the BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada; and on June 19 and 20, at the Cactus Pete Resort, 1385 Highway 93, Jackpot, Nevada. All meetings are open to the public. Meeting times are 8 a.m. to 4 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada.

Topics for discussion at each meeting will include, but are not limited to:

- February 21, (Ely, Nevada)—NEPA, Eastern Nevada Landscape Coalition, Grazing Permit Renewals, Ely RMP, and Healthy Lands Initiative;
- April 24, (Battle Mountain, Nevada)—Southern Nevada Public Lands Management Act Projects, Split Estate, Energy Projects (Wind, Solar, and Geothermal), and Southern Nevada Water Authority Project;
- June 19 and 20, (Jackpot, Nevada)—Wind Energy Tour, Fire, Western Watersheds Project, Battle Mountain RMP update, and Grazing Permit Renewal;

Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be sent to local and regional media sources at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Mike Brown, Elko Field Office, 3900 East Idaho Street, Elko, NV 89801, telephone (775) 753–0386 no later than 10 days prior to each meeting.

Dated: December 7, 2007.

Kenneth E. Miller,

District Manager.

[FR Doc. E7–24322 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–PN–252Z; CACA 49299]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: An application has been filed for the conveyance of the federally owned mineral interest in the tract of land described below in this notice. Publication of this notice temporarily segregates the mineral interests in the public lands covered by the application from appropriation under the mining and mineral leasing laws while the application is being processed.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyel, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4649.

SUPPLEMENTARY INFORMATION: The tract of land referred to above in this notice consists of 400 acres of land, situated in Nevada County, and is described as follows:

Humboldt Meridian, California

T. 1 N., R. 3 E.,
Sec. 22, E½SW¼
Sec. 33, E½SE¼
Sec. 35, NE¼, E½SE¼

Under certain conditions, Section 209(b) of the Federal Land Policy and

Management Act of 1976 authorizes the sale and conveyance of the federally owned mineral interests in land when the non-mineral, or so called ''surface'' interest in the land is not federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

In accordance with section 209(b) of the 1976 Act, on May 25, 2006, an application was filed for the sale and conveyance of the federally owned mineral interest in the above-described tract of land. Publication of this notice segregates, subject to valid existing rights, the federally owned mineral interests in the public lands referenced above in this notice from appropriation under the general mining and mineral leasing laws, while the application is being processed to determine if either one of the two specified conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR part 2720. The segregative effect shall terminate: (i) Upon issuance of a patent or other document of conveyance as to such mineral interests; (ii) upon final rejection of the application; or (iii) two years from the date of filing the application, whichever occurs first.

(Authority: 43 CFR 2720.1–1(b))

Dated: December 7, 2007.

Robert M. Doyel,

Chief, Branch of Lands Management.

[FR Doc. E7–24320 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–160–1430–FR; CACA 45957–F1; CACA–930–5410–FR–B269; CACA 49272]

Termination of Exchange Segregation and Opening Order; Application for Conveyance of Reserved Federal Mineral Interests, Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice cancels and terminates the segregation effect of a proposed land exchange of 121 acres of public land. The land will be opened to location and entry under the general land laws, including the mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law.

DATES: December 17, 2007.

ADDRESSES: Bureau of Land Management, Bakersfield Office, 3801 Pegasus Drive, Bakersfield, California 93308–6837. Detailed information concerning this action is available for review at the above address.

FOR FURTHER INFORMATION CONTACT: Rosalinda Estrada, Realty Specialist, at the above address, or at 661–391–6126

SUPPLEMENTARY INFORMATION: A Decision was issued on February 11, 2007, which segregated the land described therein from location and entry under the general land laws, including the mining laws, subject to valid existing rights, for a 5-year period. The Bureau of Land Management has determined that the proposed land exchange of the following described lands will not be needed and has been cancelled:

Mount Diablo Meridian, Kern County, California

T. 29 S., R. 29 E.,
Sec. 6, E½NW¼, SW¼
The above described property aggregates approximately 121 acres in Kern County.

At 9 a.m. on December 17, 2007 the land will be opened to the operation of the general land laws and to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, because Congress has provided for such determinations in local courts. All valid applications under any other general land laws received at, or prior, to 9 a.m. December 17, 2007 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Mineral Conveyance Segregation

In accordance with section 209(b) of FLPMA, on September 29, 2007, an application was filed for the sale and conveyance of the Federally-owned mineral interest in the above-described tract of land. Publication of this notice segregates, subject to valid existing rights, the Federally-owned mineral interests in the public lands referenced above in this notice from appropriation under the public land laws, including the mining laws, while the sale application is being processed in accordance with the procedural requirements of 43 CFR part 2720. The segregative effect shall terminate: (i) Upon issuance of a patent or other document of conveyance as to such mineral interests; (ii) upon final rejection of the application; or (iii) two years from the date of filing the application, whichever occurs first.

(Authority: 43 CFR 2720.1–1(b))

Dated: December 7, 2007.

Robert M. Doyel,

Chief, Branch of Lands Management.

[FR Doc. E7–24426 Filed 12–14–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 1, 2007.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 2, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Coconino County

Kane Ranch Headquarters, Approx. 11 mi. S of U.S. 89A on Forest Rd. 8910, House Rock Valley, 07001348.

Picture Canyon Archaeological Site, Address Restricted, Flagstaff, 07001349.

CALIFORNIA

Alameda County

Berkeley High School Campus Historic District, 1980 Allston Way, Berkeley, 07001350.

Hagemann Ranch Historic District, 455 Olivina Ave., Livermore, 07001351.

Monterey County

Carmel Vally Road—Boronda Road Eucalyptus Tree Row, Carmel Valley Rd. & Boronda Rd., Carmel Valley, 07001352.

San Bernardino County

Bono's Restaurant and Deli, 15395 Foothill Blvd., Fontana, 07001353.

COLORADO

Rio Blanco County.

Pyramid Guard Station, Co. Rd. 8, Yampa, 07001354.

CONNECTICUT

Fairfield County

Tod's Point Historic District, Tod's Driftway, Greenwich, 07001355.

DISTRICT OF COLUMBIA

District of Columbia

Washington Navy Yard (Boundary Increase), Generally bounded by M St., Anacostia Rd., Isaac Hull Ave. & 2nd St. SE., Washington, 07001356.

FLORIDA

Hamilton County

Jennings High School, 1291 Florida St., Jennings, 07001357.

IOWA

Polk County

Baker—DeVotie—Hollingsworth Block (Boundary Increase), 516–526 E. Grand Ave., Des Moines, 07001358.

Woodbury County

Sioux City Linseed Oil Works, 210 Court St., Sioux City, 07001359.

MASSACHUSETTS

Hampshire County

Ross Farm, (Underground Railroad in Massachusetts MPS). 123 Meadow St., Northampton, 07001360.

Plymouth County

East Rochester Church and Cemetery Historic District, 355 County Rd., Rochester, 07001361.

Worcester County

Whitmore, Enoch, House, (Underground Railroad in Massachusetts MPS). 12 Daniels Ln., Ashburnham, 07001362.

MONTANA

Chouteau County

First National Bank of Geraldine, 311 Main St., Geraldine, 07001363.

Madison County

Ferris—Hermsmeyer—Fenton, 144 Duncan District Rd., Sheridan, 07001364.

NEW YORK

Greene County

Allan Teator Road Stone Arch Bridge, Allan Teator Rd., West Durham, 07001365.

Croswell—Parsons Paper Mill Ruin, NY 144, New Baltimore, 07001366.

Hervey Street Road Stone Arch Bridge, Hervey Street Rd., & Hervey Street-Sunside Rd., Hervey Street, 07001367.

Shady Glen Road Stone Arch Bridge, Shady Glen Rd. at Stone Bridge Rd., Cornwallville, 07001368.

Rensselaer County

Clark—Dearstyne—Miller Inn, 11–13 Forbes Ave., Rensselaer, 07001369.

Schoharie County

Livingstonville Community Church, 1667 Hauverville Rd., Livingstonville, 07001370

NORTH CAROLINA

Davidson County

Erlanger Mill Village Historic District, Roughly bounded by Winston Rd., Short, 7th, Hames, Second Rainbow, Park Circle, & Olympia Sts., Lexington, 07001371.

Durham County

Trinity Historic District (Boundary Increase II), (Durham MRA), 209–215 N. Gregson St., Durham, 07001372.

Franklin County

Vann, Aldridge H., House, 115 N. Main St., Franklinton, 07001373.

Gaston County

Central School, 317 Washington Ave., Bessemer City, 07001374.

Harnett County

Melvin, Dr. Wayman C. House, 6386 NC 217, Linden, 07001375.

Lincoln County

Reinhardt—Craig House, Kiln and Pottery Shop, 3171 Cat Square Rd., Vale, 07001376.

OREGON

Multnomah County

Bowman, John and Ellen, House, (Architecture of Ellis F. Lawrence MPS), 1719 NE. Knott St., Portland, 07001377.

Kern, Grace, House, 1740 SW. West Point Ct., Portland, 07001378

PENNSYLVANIA

Bucks County

Springtown Historic District, Main St. between Drifting Dr. & Springtown Hill Rd. (Springfield Township), Springtown, 07001379.

Somerset County

Shade Furnace Archaeological District, (Iron and Steel Resources of Pennsylvania MPS), Address Restricted, Reitz, 07001380.

RHODE ISLAND

Providence County

Weybosset Mills Complex, Dike, Oak, Magnolia, Agnes & Troy Sts., Providence, 07001381.

TENNESSEE

Bradley County

Cleveland to Charleston Concrete Highway, Market & Water Sts., Charleston, 07001382.

TEXAS

Dallas County

Greenway Parks Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by W. Mockingbird Ln., W. University Blvd., Inwood & N. Dallas Tollway., Dallas, 07001383.

Harris County

Texas State Hotel, 720 Fannin, Houston, 07001384.

WASHINGTON

Pierce County

Lord—Heuston House, 2902 N. Cedar St., Tacoma, 07001385.

Manley—Thompson Ford Agency, 1302–1306 Fawcett Ave., Tacoma, 07001386.

Skamania County

Underwood, Edward and Isabelle, Farm—Five Oaks Farm, 851 Orchard Ln., Underwood, 07001387.

WISCONSIN

Fond Du Lac County

Brandon Village Hall and Library, 117 E. Main St., Brandon, 07001388.

[FR Doc. E7–24294 Filed 12–14–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–496]

Caribbean Region: Review of Economic Growth and Development

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request on November 7, 2007, from the Committee on Ways and Means of the U.S. House of Representatives pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–496, *Caribbean Region: Review of Economic Growth and Development.*

DATES:

January 16, 2008: Deadline for filing requests to appear at the public hearing.

January 22, 2008: Deadline for filing pre-hearing briefs and statements.

January 29, 2008: Public hearing.

February 5, 2008: Deadline for filing post-hearing briefs and statements and all other written submissions.

May 7, 2008: Transmittal of Commission report to Committee on Ways and Means.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project leaders Walker Pollard (202–205–3228 or *walker.pollard@usitc.gov*) or Nannette Christ (202–205–3263 or *nannette.christ@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

Background: As requested by the Committee, the Commission will conduct an investigation under section 332(g) of the Tariff Act of 1930 and prepare a report that provides (1) an in-depth description of the current level of economic development in the Caribbean basin, and (2) an overview of the economic literature on potential Caribbean development.

The Committee requested that the Commission institute a fact-finding investigation to provide a report containing information that will assist the Committee in identifying the ways that U.S. trade and aid policy can most help the Caribbean Basin. The Committee noted that the Caribbean Basin Trade Partnership Act (CBTPA) will expire on September 30, 2008 (ending temporary trade preferences for imports of apparel, petroleum and petroleum products, and several other products not otherwise eligible for preferences under the Caribbean Basin Economic Recovery Act (CBERA)). In its request letter, the Committee noted the importance of economic development in the Caribbean region, and also noted that, despite many successes, parts of the region still lack the economic development that will allow a wider population in CBERA countries to compete globally and become strong economic and political partners for the United States. The Committee expressed a need, in deciding on the best policy moving forward, to examine past successes and failures of the region's economic growth. The letter further notes that there are companies in the Caribbean that have found creative ways to use the region's strengths to overcome its constraints and compete successfully in the global market, and that their success may suggest ways that U.S. policy can best assist the region.

Current level of Caribbean economic development. With respect to the current level of Caribbean economic development, the report will provide an overview of the current level of economic development in the Caribbean, at the regional level and the country level. To the extent possible, the regional level overview will include:

- Data on standard indicators of economic development in the Caribbean region;
- Data relating to the importance of trade, especially with the United States, in the economies of countries in the region; and
- Data on the extent of utilization of CBERA preferences, including the textile and apparel provisions.

The country level overview will include country profiles of the 18 non-DR–CAFTA CBERA countries. For each country, the Commission in the report will, to the extent possible, seek to:

- Identify the major industries/sectors, by output, exports, employment, and wages and also indicate the extent to which people in each country live in economic conditions below poverty levels;
- Identify the division of output, employment, and exports between agriculture, services, and manufacturing;
- Identify the industries/sectors (if any) that have been particularly successful in attracting investment, creating jobs and exports, and raising the standard of living for a broad portion of the population. The Commission will, if it finds it feasible, include brief case studies of successful industries that have been able to compete globally despite small size or capacity constraints, with an eye toward identifying what enabled these smaller industries to be successful; and
- Identify the non-trade-related factors that have had major impacts on the country's economic development.

Overview of economic literature on potential Caribbean development. The report will also summarize the literature assessing the direction of future Caribbean development, and in particular, articles that address the following:

- Economic development policies that have been tried in the Caribbean, including how these policies have fared, the extent to which progress reached a broad portion of the population, the role of international financial institutions, and the major impediments to further economic development in the region today;
- The importance of trade liberalization and subsequent trade growth to progress in economic development;
- The extent to which trade growth allowed goods and services providers in CBERA countries to move to production that yields higher value-added per worker and/or higher wages for workers, and whether there is evidence that trade growth has contributed to poverty reduction, faster economic growth, or other aspects of economic development;
- The industries/sectors that may show promise for output, job, and export creation in the Caribbean, based either on the success of those industries/sectors in other Caribbean countries or the success of those industries/sectors in other world regions with similar national economic characteristics. Identify (1) industries/sectors that bring widespread benefits, (2) smaller industries/sectors that are globally competitive, (3) the potential for a hub-and-spoke system in the region, and (4) industries/sectors that are non-traditional in the region;
- The extent to which Caribbean goods and services industries/sectors compete in the global economy against other countries' goods and services, as well as the major impediments to the global competitiveness of Caribbean goods and services.
- The extent to which agreements such as NAFTA, the Uruguay Round, the International Technology Agreement, and CAFTA have affected Caribbean trade with the United States.
- Countries that have benefited from CBERA preferences, and from CBERA textile and apparel preferences in particular. Describe the extent to which these preferences (1) allowed these countries to move into production that yields higher value-added per worker and/or higher wages, and (2) attracted

industries other than apparel and textiles;

• The extent of loans and other financial support provided by the Inter-American Development Bank and the World Bank;

• Types of policies that might encourage a wider use of the CBERA program.

• Ways that U.S. trade policy, including through preference programs and trade expansion, as well as economic aid (e.g., financial aid for training, technical assistance, etc.) as part of a coordinated policy, might strengthen the ability of the region to compete globally in terms of increasing output, employment, and exports.

• Identify ways that U.S. trade policy liberalization, special tax preference programs, and/or economic aid might help Caribbean countries to develop new industries that will improve the Caribbean standard of living.

• Identify U.S. investment or services trade liberalization policies that could assist the Caribbean region, if those policies will benefit a broad base of the populations of the affected countries.

As requested by the Committee, the Commission will provide its report by May 7, 2008.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on January 29, 2008. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., January 16, 2008, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., January 22, 2008, and all post-hearing briefs and statements should be filed not later than 5:15 p.m., February 5, 2008. In the event that, as of the close of business on January 16, 2008, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after January 16, 2008, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., February 5, 2008. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR. 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

Committee staff has indicated that the Committee intends to make the Commission's report available to the public in its entirety, and has asked that the Commission not include any confidential business information or national security classified information in the report that the Commission sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: December 11, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–24287 Filed 12–14–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–028]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 19, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary) (Sodium Nitrite from China and Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before December 26, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 3, 2008.)
5. Outstanding action jackets:
   (1). Document No. GC–07–225 (Administrative matter).
   (2). Document No. GC–07–232 (Proposed rulemaking in regard to section 337 investigations under 19 CFR parts 201 and 210).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 12, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–24429 Filed 12–14–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0292]

Bureau of Justice Statistics; Agency Information Collection Activities: Existing Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Survey of Sexual Violence.

The Department of Justice (DOJ), Bureau of Justice Statistics (BJS) will be submitting the following information collection request to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 196, page 57962–57963, on October 11, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 16, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Paige Harrison, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (*phone:* 202–514–0809).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Existing collection.

(2) *Title of the Form/Collection:* Survey on Sexual Violence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection*: *Form Number*: SSV1, SSV2, SSV3, SSV4, SSV5, SSV6; SSV–IA, SSV–IJ; Bureau of Justice Statistics, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: *Primary:* State, Local, or Tribal Government. *Other:* Federal Government, Business or other for-profit, Not-for-profit institutions. The data will be used to develop estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 912 respondents will complete each summary form within 60 minutes and each substantiated incident form (as needed, we estimate about 950 forms will be completed) in 15 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,150 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 12, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–24360 Filed 12–14–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0024]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review; Reports of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Reports of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number:

Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Persons handling listed chemicals and tableting and encapsulating machines are required to report thefts, losses and suspicious orders pertaining to these items. These reports provide DEA with information

regarding possible diversion to illicit drug manufacture.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 2,000 persons respond as needed to this collection. Responses take 15 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection takes 500 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 11, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7–24374 Filed 12–14–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Applicant Questionnaire: Race, National Origin, Gender, and Disability Demographics.

The Department of Justice, Federal Bureau of Investigation, Human Resources Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The proposed information collection is published to obtain comments from the public and other government agencies. Comments are encouraged and will be accepted until February 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information should be directed to Angela Graham, Human Resources Specialist, Human Resources Management Section (HRMS), Human Resources Division (HRD), Staffing Unit, Federal Bureau of Investigation, 935 Pennsylvania Ave., NW., Room GP–702B, Washington, DC 20636. To view the proposed collection instrument with instructions on online, please visit the following link: *http://www.fbi.gov/fbijobs_proposedcollection.htm.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Submit your comments to *angela.graham@ic.fbi.gov.* Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the propose collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Approval of new collection.

(2) *The title of the form/collection:* Applicant Questionnaire: Race, National Origin, Gender, and Disability Demographics.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 3–873 (Demographic Information) Human Resources Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: Any person applying registering and/or applying for a position at the Federal Bureau of Investigation. Abstract: The Equal Employment Opportunity Commission Management Directive 715 (MD 715), requires agencies to maintain a system that: (1) Collects and maintains accurate information on race, national origin, gender and disability of an agency in accordance with 29 CFR, paragraph 1614.601; (2) tracks applicant flow data, which identifies applicants by race, national origin, gender, and disability status and disposition of applications; and, (3) tracks recruitment activities to permit analyses of these efforts in any examination of potential barriers to equality of opportunity. Agencies must also ''conduct an internal review and analysis of the effects of all current and proposed policies, practices, and conditions that directly or indirectly,'' related to the employment of individuals with disabilities based on their race, national origin, gender and disabilities. However, an Agency may not conduct or sponsor, and a person is not required to, a collection of information, unless it displays a currently valid OMB control number. In order to comply with MD 715, the FBI is requesting clearance from OMB in accordance with established review procedures of the Paperwork Reduction Act of 1995.

Once cleared for use, the form will be used to collect race, national origin, gender, and disability demographic information from applicants registering in the FBI's automated hiring system. All job applicants, whether internal or external, would be asked to complete, on a voluntary basis, an ''Applicant Questionnaire: Race, National Origin, Gender, and Disability Demographics.'' The FBI must collect and evaluate information and data necessary to make an informed assessment the extent to which the Agency is meeting its responsibility to provide employment opportunities for qualified applicants and employees with disabilities, especially those with target disabilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for or an average respondent to respond*: Total number of respondents: 609,246. *Frequency of response*: One time completion of questionnaire per respondent. *Estimated time for average respondent to respond*: 5 minutes.

(6) *An estimate of the total public burden (in hours) associated with this collection*: There are approximately 50,505 annual burden hours associated with this collection.

(7) *An estimate of the total annual cost*: None.

If any additional information is required contact Lynn Bryant, Department Clearance Officer, Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: December 11, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–24378 Filed 12–14–07; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0291]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: National Juvenile Probation Census Project.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 196, page 57965 on October 11, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 16, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Requests of written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* National Juvenile Probation Census Project which consists of two forms: Census of Juvenile Probation Supervision Offices (CJPSO) and Census of Juveniles on Probation (CJP).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: CJ–16 (CJPSO) and CJ–17 (CJP). Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract*: *Primary:* State, Local or Tribal Governments. *Other:* N/A. This project consists of two forms that will be sent to juvenile geographic probation supervision areas (GPSAs), on alternate years. The CJPSO will collect information regarding the activities of juvenile probation offices nationwide; the CJP will collect information regarding the number and characteristics of juveniles on probation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The CJPSO response burden is estimated at .75 hours per response. The study will first field test the CJPSO form on a sample of 336 juvenile GPSAs. Then the form will be sent to all 1,715 juvenile GPSAs. The following year, approximately 500 of the 1,715 will also be asked to complete the CJP, at an estimate of 5.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,289 public burden hours associated with the CJPSO and CJP collections.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: December 12, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–24358 Filed 12–14–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption 2007–17; Grant of Individual Exemptions Involving; D–11390, BSC Services Corp. 401(k) Profit Sharing Plan (the Plan), PTE 2007–17; D–11402 and D–11403, Owens Corning Savings Plan and Owens Corning Savings and Security Plan (Collectively, the Plans), PTE 2007–18; D–11405, Middleburg Trust Company (Middleburg), PTE 2007–19; D–11420, BlackRock, Inc (BlackRock), and Merrill Lynch & Co. (Merrill Lynch) (Collectively, the Applicants), PTE 2007–20; D–11441, Gastroenterology and Oncology Associates, P.A. (the Plan), 2007–21

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

BSC Services Corp. 401(k) Profit Sharing Plan (the Plan), Located in Philadelphia, PA

[Prohibited Transaction Exemption 2007–17; Exemption Application No. D–11390]

Exemption

Section I—Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code,[1] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 27, 2006, to (1) the acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) from First Bank of Delaware (the Bank), a party in interest and the parent company of BSC Services Corp., which is the Plan sponsor as well as a party in interest with respect to the Plan; (2) the holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan.

Section II—Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following conditions:

(a) The Rights were acquired by the Plan pursuant to Plan provisions for the individually-directed investment of participant accounts.

(b) The Plan's receipt of the Rights occurred in connection with the Rights Offering made available to all shareholders of the Bank's common stock (the Bank Stock).

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made in accordance with Plan provisions for the individually-directed investment of participant accounts by the individual participants whose accounts in the Plan received Rights in the Offering, and if no instructions were received, the Rights expired.

(d) The Plan's acquisition of the Rights resulted from an independent act of the Bank as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition, holding and disposition of such Rights.

(e) The Plan received the same proportionate number of the Rights as other owners of Bank Stock.

Effective Date: This exemption is effective as of April 27, 2006.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 2, 2007 at 72 FR 36059.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone number (202) 693–8556. (This is not a toll-free number.)

Owens Corning Savings Plan and Owens Corning Savings and Security Plan (Collectively, the Plans), Located in Toledo, Ohio

[Prohibited Transaction Exemption 2007–18; Exemption Application Numbers D–11402 and D–11403, respectively]

Exemption

The restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective October 31, 2006, to: (1) The acquisition by the Plans of certain warrants (the Warrants) issued by Owens Corning (the Applicant), a party in interest with respect to the Plans, where such Warrants have been issued in exchange for the common stock (the Old Common Stock) of the Applicant incident to a bankruptcy reorganization; (2) the holding of the Warrants by each of the Plans pending the exercise or other disposition of said Warrants; (3) the exercise of the Warrants by participants in the Plans to permit acquisition of shares of the Applicant's new common stock (the New Common Stock).

In addition, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 31, 2006, to the sale or disposition of the Warrants by participants in the Plans through a broker-dealer acting as an agent on behalf of such participants.

Conditions

(a) Other than the right to vote on the Reorganization Plan, the Plans had no ability to affect the provisions of the Sixth Amended Joint Plan of Reorganization for Owens Corning and Its Affiliated Debtors and Debtors-in-Possession (the Reorganization Plan) approved by the United States Bankruptcy Court for the District of Delaware (the Bankruptcy Court) on September 26, 2006 pursuant to Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code);

(b) The acquisition and holding of the Warrants by the Plans occurred in connection with the Reorganization Plan, in which all holders of the Applicant's stock of the same class have been and will be treated similarly;

(c) The Warrants were acquired automatically and without any action on the part of the Plans;

(d) The Plans did not pay any fees or commissions in connection with the acquisition or holding of the Warrants;

(e) The Plans will not pay any fees or commissions in connection with the exercise of the Warrants;

(f) All decisions regarding the exercise or other disposition of the Warrants have been and will be made by the individual participants of the Plans in whose accounts the Warrants were allocated, in accordance with the respective provisions of the Plans pertaining to the individually-directed investment of such accounts, subject to the duty of the fiduciaries of the Plans to take action consistent with sections 403 and 404 of the Act, in the event the current market price for the New Common Stock is below $45.25 per share (the Strike Price) at the time of participant exercise or in the event that it becomes clear that the Warrants would otherwise expire ''in the money'' unexercised by participants; and

(g) The terms and conditions applicable to the sale of the Warrants by participants in the Plans have been and will be at least as favorable to the Plans as those that would have been obtained in an arm's length transaction with an unrelated party.

[1] For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Written Comments

The Notice of Proposed Exemption (the Notice), published in the **Federal Register** on July 2, 2007, stated that the Applicant would distribute the Notice to interested persons within fifteen (15) days of its publication in the **Federal Register**; the Notice also invited all interested persons to submit written comments and requests for a hearing to the Department concerning the proposed exemption within forty-five (45) days of the date of its publication.

Shortly after the Notice was published in the **Federal Register**, the Applicant requested that the Department extend the foregoing deadlines for notification to interested persons. The Department agreed to this request, and advised the Applicant that notification to interested persons be provided no later than August 16, 2007. The Department received a written certification from the Applicant dated August 17, 2007 confirming that the Notice and the accompanying supplemental statement had been distributed to interested persons on August 15, 2007 via first class mail.

During the comment period, the Department received two written comments concerning the Notice. One comment, submitted by a former employee of the Applicant, expressed opposition to the proposed exemption, but did not offer any information or rationale in support of this viewpoint. The second comment received by the Department was submitted by the Applicant. In its comment, the Applicant represented that although it had originally requested exemptive relief from the Department for the acquisition, holding, exercise, and other disposition of the Warrants (including the sale of the Warrants to third parties), the Notice did not contain relief for the disposition of the Warrants.

In this regard, the Applicant also expressed its understanding that securities traded through the Pink Sheets (such as the Warrants) may be sold in the context of either principal transactions (wherein a market maker or broker purchases the security for its own account) or agency transactions (wherein the broker acts as agent for a non-broker purchaser). In either instance, the commenter stated, it was possible that the purchaser of the Warrants could be a party in interest with respect to the plan. Further, the Applicant commented that neither Part II nor Part IV of PTE 75–1 (40 FR 50845, October 31, 1975, as amended at 71 FR 5883, February 3, 2006) would provide relief from the restriction of section 406(a) of the Act for an agency transaction involving the Warrants. In this connection, the Applicant expressed the view that it would not be in the interests of the Plans or of the Plans' participants to limit the potential purchasers of the Warrants to market makers or other brokers who could rely on PTE 75–1. The Applicant also commented that the applicability of section 408(b)(17) of the Act to the transactions described in the proposed exemption was problematic because certain interpretive issues may be raised in applying the adequate consideration condition contained therein, particularly in the case of participant-directed plans and/or securities not traded on an exchange.

The Applicant also commented that Fidelity Brokerage Services, LLC (Fidelity), which is not affiliated with the Applicant, will process the Warrant sales ''in accordance with its customary provisions for the execution of securities transactions in the over the counter [OTC] market and neither [the Applicant] nor any affiliate will have any role in that process.'' Based on the foregoing considerations, the Applicant requested in its comment that the Department modify the proposed exemption by (1) permitting relief from the applicable restrictions of the Act and the Code for the sale or disposition of the Warrants and (2) limiting such relief to those sales transactions that are ''at least as favorable to the Plan as an arms'' length transaction with an unrelated party would be.'' [2]

In response to the Applicant's request, the Department has determined to grant exemptive relief to the Applicant for the sale or disposition of the Warrants by participants in the Plans provided that such sale or disposition was effected through a broker-dealer acting as an agent on behalf of such participants. In addition, the Department has determined to add a condition (Condition (g)) to the exemption which stipulates that such relief is only available where ''the terms and conditions applicable to the sale of the Warrants by participants in the Plans have been and will be at least as favorable to the Plans as those that would have been obtained in an arm's length transaction with an unrelated party.''

Condition (a) of the proposed exemption (located in the first column on page 36058 of the July 2, 2007 edition of the **Federal Register**) states that ''[t]he Plans had no ability to affect the provisions of the Sixth Amended Joint Plan of Reorganization for Owens Corning and its Affiliated Debtors and Debtors-in-Possession (the Reorganization Plan) approved by the United States Bankruptcy Court for the District of Delaware (the Bankruptcy Court) on September 26, 2006 pursuant to Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code).'' The Applicant suggested that, ''[f]or the purpose of clarity,'' Condition (a) of the proposed exemption should be modified by the Department by inserting the words ''Other than the right to vote on the Reorganization Plan'' at the beginning of the condition. The Department has agreed to adopt the Applicant's request concerning this matter.

Condition (f) of the proposed exemption (located in the second column on page 36058) states that ''[a]ll decisions regarding the exercise or other disposition of the Warrants have been and will be made by the individual participants in the Plans in whose accounts the Warrants were allocated, in accordance with the respective provisions of the Plans pertaining to the individually-directed investment of such accounts.'' The Applicant suggested in its comment that Condition (f) of the proposed exemption should be modified by the Department to read as follows: ''All decisions regarding the exercise or other disposition of the Warrants have been and will be made by the individual participants of the Plans to whose accounts the Warrants were allocated, subject to the duty of the Plan fiduciaries to take action with respect to the employer securities held by the Plans pursuant to sections 403 and 404 of ERISA, and the right of the Plan sponsor to amend the Plans.'' The Applicant commented that such a revision is necessary to confirm that the relief provided by the exemption would still be available even if the fiduciaries of the Plans were required to exercise their fiduciary duty with respect to the Warrants (as noted by the Department in footnote 10 of the proposed exemption, located at the bottom of page 36059, which states that ''[t]he Applicant acknowledges that the appropriate fiduciaries of the Plans shall be responsible for monitoring the investment options available to participants in the Plans, and taking such action as they deem appropriate under the circumstances.'' Such action

[2] On November 22, 2007, the Department received a written communication from the Applicant stating that the New Common Stock became an investment option for participants in the Plans as of November 6, 2007. The Applicant further represented that this development does not affect the rights of participants in the Plans with respect to the Warrants held in their respective accounts (i.e., the participants will continue to have the ability to sell or exercise the Warrants).

may include preventing participants from exercising the Warrants if the current market price for the Common Stock is below the Strike Price, or causing the Plans to sell the Warrants in the event that it becomes clear that they would otherwise expire unexercised by participants.

After due consideration of this comment, the Department has decided to modify the text of Condition (f) of the exemption to read as follows: ''All decisions regarding the exercise or other disposition of the Warrants have been and will be made by the individual participants of the Plans in whose accounts the Warrants were allocated, in accordance with the respective provisions of the Plans pertaining to the individually-directed investment of such accounts, subject to the duty of the fiduciaries of the Plans to take action consistent with sections 403 and 404 of the Act, in the event the current market price for the New Common Stock is below $45.25 per share (the Strike Price) at the time of participant exercise or in the event that it becomes clear that the Warrants would otherwise expire 'in the money' unexercised by participants.'' In this regard, the Department notes that no relief is provided under this final exemption for the plan fiduciaries to overrule the direction of participants, unless the direction or lack of direction is clearly imprudent under the particular circumstances.

The Applicant also provided a comment concerning the content of footnote 8 of the Notice (located at the bottom of the first column on page 36059), which states that ''[b]ased on the Applicant's representations, to the extent the Warrants are publicly traded on a national exchange to unrelated third parties, no exemptive relief is being provided by the Department.'' In this regard, the Applicant represented in its comment that the Warrants are not traded on a national exchange. The Department concurs with the Applicant, and hereby deletes footnote 8 in its entirety.

The Applicant also made two additional suggestions for technical revisions to the proposed exemption. In the fifth sentence of the second paragraph of the ''Summary of Facts and Representations'' section of the proposed exemption (located in the second column of page 36058), the following language appears: ''The Reorganization Plan became effective on October 31, 2006, at which time the Old Common Stock was delisted from the New York Stock Exchange and all outstanding shares of the Old Common Stock were cancelled.'' The Applicant has now advised the Department in its comment that the Old Common Stock was delisted some time before October 31, 2006, the date on which it was cancelled. In addition, the Applicant suggested modification of the content of the seventh sentence of the same paragraph (located in the third column of page 36058), which states that ''[t]he Applicant represents that the Warrants do not constitute qualifying employer securities as defined in section 407(d)(5) of the Act.'' In this connection, the Applicant commented that ''it did not concede in its [a]pplication [for exemption] that the Warrants 'do not constitute' qualifying employer securities, but indicated that they may not be.'' After due consideration, the Department has adopted these clarifications requested by the Applicant.

Therefore, after giving full consideration to the entire record, the Department has determined to grant the exemption subject to the modifications described herein.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the **Federal Register** on July 2, 2007 at 72 FR 36058.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number).

Middleburg Trust Company (Middleburg), Located in Richmond, VA

[Prohibited Transaction Exemption 2007–19; Application No. D–11405]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale, on March 28, 2006, by the William T. Smith IRA (the IRA) [3] of certain bonds (the Bonds) to Middleburg, a disqualified person with respect to the IRA, provided that the following conditions are satisfied:

(a) The sale was a one-time transaction for cash;

(b) The purchase price for the Bonds was based on the Bonds' face value;

(c) The Bonds' face value was in excess of bids for the Bonds solicited from independent brokers and in excess of the price for the Bonds quoted by an independent valuation service for the date of the sale;

(d) Neither the IRA nor Mr. William T. Smith, the owner of the IRA, paid any fees, commissions, or other costs or expenses associated with the sale;

(e) The IRA received its portion of income and all interest accrued on the Bonds through the date of the sale;

(f) The terms and conditions of the sale were at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party; and

(g) Within 30 days of the publication of the grant notice in the **Federal Register**, Middleburg will pay the IRA $196.53 to make up for the loss sustained by the IRA as a result of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 26, 2007 at 72 FR 60904.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji of the Department, telephone number (202) 693–8567. (This is not a toll-free number).

BlackRock, Inc. (BlackRock), and Merrill Lynch & Co. (Merrill Lynch) (Collectively, the Applicants), Located in New York, New York

[Prohibited Transaction Exemption 2007–20 Application No. D–11420]

Exemption

Section I—Transactions

The restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section III(k), by an Asset Manager, as defined, below, in Section III(f), from any person other than a Merrill Lynch/BlackRock Related Entity or Merrill Lynch/BlackRock Related Entities, as defined, below, in Section III(c), during the existence of an underwriting or selling syndicate with respect to such Securities, where a Merrill Lynch/BlackRock Related Broker-Dealer, as defined, below, in Section III(b), is a manager or member of such syndicate and the Asset Manager purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section III(h); or

(b) On behalf of Client Plans, and/or In-House Plans, as defined, below, in Section III(o), which are invested in a pooled fund or in pooled funds (Pooled

[3] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Fund(s)), as defined, below, in Section III(i); provided that the conditions as set forth, below, in Section II, are satisfied (Transactions described in Section I(a) and (b) are referred to herein as an affiliated underwriter transaction(s) (AUT(s)).[4]

Section II—Conditions

The exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased—

(1) Are non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations); provided that none of the Rating Organizations rates such securities in a category lower than the fourth highest rating category; or

(2) Are debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Are debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor:

(a) Is a bank, or

(b) Is an issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) Is an issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act)(15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed hereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) the assets, calculated on a *pro-rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) the assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(1) 10 percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) 35 percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(3) 25 percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1),

[4] For purposes of this exemption an In-House Plan may engage in AUT's only through investment in a Pooled Fund.

(2), and (3), above, of this exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit any Merrill Lynch/BlackRock Related Entity.

(f) No Merrill Lynch/BlackRock Related Broker-Dealer receives, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this exemption. In this regard, a Merrill Lynch/BlackRock Related Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount a Merrill Lynch/BlackRock Related Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating such Merrill Lynch/BlackRock Related Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding a Merrill Lynch/BlackRock Related Broker-Dealer from receiving management fees for serving as manager of an underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this exemption; and

(2) Each Merrill Lynch/BlackRock Related Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of such Merrill Lynch/BlackRock Related Broker-Dealer, stating the amount that each such Merrill Lynch/BlackRock Related Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(j).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary:

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials, (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this exemption; and provided further that the information described, below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled

Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Merrill Lynch/BlackRock Related Broker-Dealer and will provide the address of the Asset Manager. The instructions will state that this exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the Merrill Lynch/BlackRock Related Entities. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined, below, in Section III(j).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan be independent of the Merrill Lynch/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii); provided that the Notice and the Grant, described, above, in Section II(k)(2)(i) are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this exemption for each plan proposing to invest in a Pooled Fund be independent of the Merrill Lynch/BlackRock Related Entities shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.*, the difference, between the price at which the underwriter purchases the securities from the issuer and the price at which the securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of each Merrill Lynch/BlackRock Related Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this exemption during the past quarter, such Merrill Lynch/BlackRock Related Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this exemption, and

(ii) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests;

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this exemption in that quarter because of its relationship to a Merrill Lynch/BlackRock Related Broker-Dealer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the

withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering,[5] each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met, if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described, above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, are comprised of assets of In-House Plans for which the Asset Manager or a Merrill Lynch/BlackRock Related Entity exercises investment discretion.

(q) The Asset Manager and the Merrill Lynch/BlackRock Related Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(r), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager, and the Merrill Lynch/BlackRock Related Broker-Dealer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(r); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager, or the Merrill Lynch/BlackRock Related Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(r)(1) Except as provided, below, in Section II(r)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section II(q) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department of Labor (the Department), the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in Section II(r)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Asset Manager, or the Merrill Lynch/BlackRock Related Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager, or the Merrill Lynch/BlackRock Related Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(r)(2), above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Definitions

(a) The term, ''the Applicants,'' means BlackRock Inc. and Merrill Lynch & Co, Inc.

(b) The term, ''Merrill Lynch/BlackRock Related Broker-Dealer,'' means any broker-dealer that is a Merrill Lynch/BlackRock Related Entity that meets the requirements of this exemption. Such Merrill Lynch/BlackRock Related Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as

[5] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A there under [§ 230.144A of this chapter], or rules 501–508 there under [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

defined, below, in Section III(k), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term, ''Merrill Lynch/BlackRock Related Entity(s)'' includes all entities listed in this Section III(c)(i) and (ii): (i) Merrill Lynch and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Merrill Lynch, and (ii) BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with, BlackRock. For purposes of this exemption, the definition of a Merrill Lynch/BlackRock Related Entity shall include any entity that satisfies such definition in the future.

(d) The term, ''BlackRock Related Entity'' or ''BlackRock Related Entities,'' means BlackRock and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock.

(e) The term, ''Merrill Lynch Related Entity'' or ''Merrill Lynch Related Entities,'' means Merrill Lynch and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Merrill Lynch.

(f) The term, ''Asset Manager,'' means a BlackRock Related Entity, as defined, above, in Section III(d). For purposes of this exemption, the Asset Manager must be registered with the Securities and Exchange Commission as an investment advisor, have total client assets under management in excess of $5 billion, have shareholders' or partners' equity in excess of $1 million, and must satisfy the definition of a ''qualified professional asset manager'' (QPAM), as that term is defined in Part V(a) of PTE 84–14, 49 Fed. Reg. 9494 (Mar. 13, 1984), as amended, 70 Fed. Reg. 49305 (Aug. 23, 2005). Accordingly, the Asset Manager must have total client asset under its management and control in excess of $5 billion, as of the last day of it most recent fiscal year, and shareholders' or partners' equity in excess of $1 million in addition to satisfying the requirements for a QPAM under Part V(a) of PTE 84–14.

(g) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(h) The term, ''Client Plan(s),'' means an employee benefit plan or employee benefit plans that are subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(o).

(i) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s): (i) In which employee benefit plan(s) subject to the Act and/or Code invest, (ii) which is maintained by an Asset Manager, and (iii) for which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(j)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of any Merrill Lynch/BlackRock Related Entity. For purposes of this exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of any Merrill Lynch/BlackRock Related Entity, if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of any Merrill Lynch/BlackRock Related Entity, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(j), a fiduciary of a plan is not independent:

(i) If such fiduciary, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with any Merrill Lynch/BlackRock Related Entity;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from any Merrill Lynch/BlackRock Related Entity for his or her own personal account in connection with any transaction described in this exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager responsible for the transactions described, above, in Section I of this exemption, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the sponsor of a plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described, above, in Section I. However, if such individual is a director of the sponsor of a plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of such plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described, above, in Section I, then Section III(j)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for a Merrill Lynch/BlackRock Related Entity.

(k) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(n), will be treated as debt securities.

(l) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270. 10f–3(a)(4)) under the 1940 Act.

(m) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(n) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., Dominion Bond Ratings Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto.

(o) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by: (i) A Merrill Lynch Related Entity, as defined, above, in Section III(e), or (ii) a BlackRock Related Entity, as defined, above, in Section III(d), for their respective employees.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

Effective Date: This exemption will be effective as of the date the Grant is published in the **Federal Register**.

Written Comments

In the Notice, the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on September 10, 2007. All comments and requests for a hearing were due by October 10, 2007. During the comment period, the Department received no comments or requests for a hearing. However, in order to clarify the meaning of the term, ''Asset Manager,'' the Department has determined to delete the last sentence in the definition of the term, ''Asset Manager,'' as set forth in Section III(f) of the Notice, at 72 FR 51680, column 1, lines 11–20, and to substitute the following sentence, ''Accordingly, the Asset Manager must have total client asset under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year, and shareholders' or partners' equity in excess of $1 million in addition to satisfying the requirements for a QPAM under Part V(a) of PTE 84–14.''

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Gastroenterology and Oncology Associates, P.A. Profit Sharing Plan and Trust (the Plan), Located in St. Petersburg, FL

[Prohibited Transaction Exemption 2007–21; Exemption Application No. D–11441]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain shares of common stock (the Stock) issued by Alden Enterprises, Inc., an unrelated party, by the individually directed account in the Plan (the Account) of Jayaprakash K. Kamath, M.D. (Dr. Kamath), to Geetha J. Kamath, M.D., (Mrs. Kamath), Dr. Kamath's spouse and a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The sale of the Stock by the Account to Mrs. Kamath is a one-time transaction for cash.

(b) The Stock is sold to Mrs. Kamath for a price that reflects the fair market value of the Stock, as determined by a qualified, independent appraiser (the Appraiser).

(c) The closing of the sale (the Closing Date) occurs at a time that is mutually agreed upon by Mrs. Kamath and the Plan trustees (the Trustees) within 30 days of the Department's approval of the final exemption.

(d) As of the Closing Date, the Appraiser reviews the assumptions previously made in determining the appraised value of the Stock to see whether there has been a 3% or more increase (Material Increase) in the fair market value of the Stock between December 31, 2006 (the Appraisal Date) and the Closing Date.

(e) If the Appraiser determines that there has been no Material Increase in the fair market value of the Stock on the Closing Date, the Appraiser issues a letter to the parties to the sale to such effect and the sale price of the Stock remains at the value determined on the Appraisal Date.

(f) If the Appraiser determines that there has been a Material Increase in the fair market value of the Stock, he advises the parties to the transaction, in writing, as to the increased value as of the Closing Date. Then, the sale price for the Stock is revised to reflect the increased value and the amount of such increase is paid to the Trustees by Mrs. Kamath following the receipt of the updated appraisal report from the Appraiser setting forth the increased value of the Stock.

(g) The sale proceeds from the transaction are credited to Dr. Kamath's Account simultaneously with the transfer of the Stock's title to Mrs. Kamath.

(h) The Account is not responsible for paying any fees, commissions, or other costs or expenses associated with the sale of the Stock.

(i) The terms and conditions of the Stock sale remain at least as favorable to the Account as the terms and conditions obtainable under similar circumstances negotiated at arm's length with an unrelated party.

Written Comments

In the notice of proposed exemption, the Department invited all interested persons to submit written comments and requests for a hearing with respect to the proposed exemption within (30) thirty days of the publication of the notice of pendency in the **Federal Register** on October 26, 2007. All comments and requests for a hearing were due by November 26, 2007.

During the comment period, the Department received no comments or hearing requests. However, the Department has noted two errors in the proposed exemption that require either revision or clarification. In this regard, the reference to the Exemption Application Number appearing on pages 60889 and 60890 of the proposal has been modified in the grant notice to read ''D–11441'' instead of ''D–11141.'' In addition, on page 60891 of the proposal, in the paragraph captioned ''Notice to Interested Persons,'' the Department wishes to clarify that the phrase ''whose Account will be affected by the proposed transaction,'' should have been inserted after that portion of the sentence which states ''Because Dr. Kamath is the only participant in the Plan, * * *''

Accordingly, the Department has considered the entire record and has determined to grant the exemption. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 26, 2007 at 72 FR 60889.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations

contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of December, 2007.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E7–24313 Filed 12–14–07; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0082]

Meeting Notice, Work Group Meetings and Appointment of Committee Members for the Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Meeting notice, work group meetings and appointment of committee members for the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: The Occupational Safety and Health Administration announces ACCSH membership, including representation categories and terms; work group meetings January 23, 2008; and a full committee meeting on January 24–25, 2008. ACCSH is meeting to address construction safety and health issues.

DATES: *ACCSH work groups will meet* Wednesday, January 23, 2008.

ACCSH will meet Thursday and Friday, January 24–25, 2008.

Submit written materials for ACCSH or make requests to speak to ACCSH on or before January 14, 2008.

ADDRESSES: *ACCSH Meeting Locations:* ACCSH and ACCSH Work Groups will meet in Room N3437–B/C/D of the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: Comments and requests to speak, must be submitted to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *Chatmon.veneta@dol.gov*. OSHA requests that interested parties submit 20 copies of their comments, which OSHA will provide to ACCSH members and put into the official record of the meeting.

Instructions: All submissions must include the Agency name, OSHA and the docket number for this **Federal Register** notice (Docket No. OSHA–2007–0082). Submissions in response to this **Federal Register** notice, including personal information, will be posted without change at: *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section.

Docket: To read or download submissions or the official record of this ACCSH meeting, go to *http://www.regulations.gov*. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (e.g., copyrighted materials) are not publicly available to read or download through *http://www.regulations.gov*. The official record and all submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). The Department of Labor's and the OSHA Docket Office's normal business hours are 8:15 a.m.–4:45 p.m., e.t.

FOR FURTHER INFORMATION CONTACT: *For general information about ACCSH and ACCSH meetings:* Mr. Michael Buchet, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202)–693–2020; e-mail *Buchet.michael@dol.gov*.

For information about submitting comments or requests to speak, and for special accommodations for the meeting: Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *Chatmon.veneta@dol.gov*.

SUPPLEMENTARY INFORMATION:

ACCSH Meeting: ACCSH will meet January 24–25, 2008. The proposed agenda for this meeting includes:

- *Welcoming and Remarks*—OSHA, Office of the Assistant Secretary
- *Remarks*—OSHA, Directorate of Construction.
- *Standards Update*—OSHA, Directorates of Construction.
- *Standards Update*—OSHA, Directorate of Standards and Guidance.
- Committee governance, work group assignments and reports.
- OSHA's role in the National Response Plan—Overview.
- OSHA's Structural Collapse Response.
- Minnesota's I–35W Highway Bridge Collapse and OSHA's Role.
- Construction Cooperative Programs Update.
- Post-Frame Construction presentation—National Frame Builders Association.
- Concrete Masonry Unit Construction Safety presentation—Stonesmith Patented Systems, Inc.
- Public Comment.

Requests to Present or Speak to ACCSH: Interested parties may request to make oral presentations to ACCSH by notifying Ms. Veneta Chatmon at the address above on or before January 14, 2008. Requests must state the amount of time desired, the interests represented by the presenters (e.g., businesses, organizations, themselves, affiliations, etc., if any), and briefly outline the presentation. Alternately, at the Committee meeting, attendees may request to address ACCSH by signing the public comment request sheet and listing the interests they represent (e.g., businesses, organizations, themselves, affiliations, etc., if any) and the topics to be addressed. All requests to present to or address the committee may be granted at the ACCSH Chair's discretion and as time permits. Time permitting OSHA will provide speaker submissions to ACCSH members. OSHA will include all submissions in the record of the meeting.

Access to meeting record: For access to the official record of ACCSH committee meetings and copies of this **Federal Register** notice, go to *http://www.regulations.gov* and find Docket No. OSHA–2007–0082. Although all documents in the record will be listed in Docket No. OSHA–2007–0082 at *http://www.regulations.gov* index, some documents (e.g., copyrighted materials) are not publicly available to read or download. The official record, including these materials, is available for inspection and copying at the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 899–5627). Electronic copies of this **Federal Register** notice, as well as information about ACCSH work groups and other relevant documents, are available on OSHA's Web page at *http://www.osha.gov*.

ACCSH Work Group Meetings: The following ACCSH Work Groups will meet on Wednesday, January 23, 2008 in Room N 3437 B/C/D of the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210:

- The Residential Fall Protection Work Group will meet from 9 to 11:30 a.m.;
- The Diversity and Multilingual Work Group will meet from 12:30 to 3 p.m.

Building Access, Department of Labor Security: Members of the public attending the ACCSH or ACCSH Work Group meetings in the Department of Labor's Frances Perkins Building will be required to enter and exit through Building Security at the 3rd and C Streets, NW., ''Visitors' Entrance.'' Attendees must present valid government-issued photo identification and sign the log to enter the building. They should proceed to the North elevator banks and go to the third floor. Rooms N3437–B/C/D are behind the elevator bank. Attendees should allow extra time for the security procedures and reaching the meeting rooms.

Special Accommodations: Individuals needing special accommodations for ACCSH or ACCSH Work Group meetings should contact Ms. Chatmon by January 14, 2008.

ACCSH Member Appointments and Continuing Membership:

New Appointments:

Representatives of Employer Viewpoints:

Thomas R. Shanahan, Assistant Executive Director, National Association of Roofing Contractors, Term Expires November 30, 2009.

Daniel D. Zarletti, Vice President/ Chief Risk Officer, Kenny Construction Company, Term Expires November 30, 2009.

Representative of the Public Interests:

Ms. Elizabeth Arioto, Elizabeth Arioto Safety and Health Consulting Services, Term Expires November 30, 2009.

Reappointment:

Representatives of Employee Viewpoints:

Thomas L. Kavicky, Safety Director/ Assistant to the President, Chicago Regional Council of Carpenters, Term Expires November 30, 2009.

Frank L. Migliaccio, Jr., Executive Director, Safety and Health, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Term Expires November 30, 2009.

Representatives of State Safety and Health Agencies:

Kevin D. Beauregard, Assistant Deputy Commissioner, Assistant Director, Division of Occupational Safety and Health, North Carolina Department of Labor, Term Expires November 30, 2009.

Steven D. Hawkins, Assistant Administrator, Tennessee Occupational Safety and Health Administration, Term Expires November 30, 2009.

Continuing ACCSH Members:

Representatives of Employee Viewpoints:

Emmett M. Russell, Director—Department of Safety and Health, International Union of Operating Engineers, Term Expires July 3, 2008.

Robert Krul, Director of Safety & Health, United Union of Roofers, Waterproofers and Allied Workers, Term Expires July 3, 2008.

David Dale Haggerty, MOST Representative—Safety, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Term Expires July 3, 2008.

Representatives of Employer Viewpoints:

Daniel J. Murphy, Vice President of Construction Services, Zurich North America, Term Expires July 3, 2008.

Linwood O. Smith, Vice President of Risk Management and Safety, T.A. Loving Company, Term Expires July 3, 2008.

Michael J. Thibodeaux, Consultant, National Association of Home Builders, Term Expires July 3, 2008.

Representative of the Public Interests:

Thomas A. Broderick, Executive Director, Construction Safety Council and Chicagoland Construction Safety Council, Term Expires July 3, 2008.

Designee of the Secretary of Health and Human Services:

Matt Gillen, Senior Scientist and Construction Program Coordinator, National Institute of Occupational Safety and Health, Term Expiration, Indefinite.

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*), the Federal Advisory Committee Act (5 U.S.C. App. 2), and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, this 10th day of December, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–24256 Filed 12–14–07; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943–MLA; ASLBP No. 07–859–03–MLA–BD01]

Crow Butte Resources, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Crow Butte Resources, Inc., In-Situ Leach Uranium Recovery Facility, Crawford, Nebraska, License Amendment for the North Trend Expansion Area)

This Board is being established in response to requests for hearing that were filed pursuant to a Notice of Opportunity for Hearing posted on NRC's Public Web site on September 13, 2007 regarding a Request for License Amendment submitted by Crow Butte Resources, Inc. (''CBR'') on May 30, 2007 that would allow CBR to develop a satellite facility near its existing in-situ leach uranium recovery facility in Crawford, Nebraska. This proceeding concerns the requests for hearing and petitions for intervention submitted by: (1) Debra L. White Plume; (2) Debra L. White Plume, Director, Owe Aku, Bring Back the Way; (3) Western Nebraska Resources Council; (4) Thomas Kanatakeniate Cook; (5) Slim Buttes Agricultural Development Corporation; (6) Chadron Native American Center, Inc.; and (7) High Plains Community Development Corporation.

The Board is comprised of the following administrative judges:

Ann Marshall Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Frederick W. Oliver, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 11th day of December 2007.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E7–24387 Filed 12–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–317]

Calvert Cliffs Nuclear Power Plant, Inc.; Calvert Cliffs Nuclear Power Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50.46 and Appendix K to Part 50 for Renewed Facility Operating License No. DPR–53, issued to Calvert Cliffs Nuclear Power Plant, Unit No. 1 (Calvert Cliffs 1), located in Calvert County, Maryland. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow the licensee to reinsert up to four lead fuel assemblies (LFAs), two of which contain cladding with advanced zirconium-based alloys manufactured by Westinghouse Electric Company (Westinghouse), and two of which contain cladding with M5™ alloy manufactured by AREVA, into the Unit 1 core during Cycle 19. The four LFAs were previously inserted into the Unit 2 core in April of 2003. The proposed action is in accordance with the licensee's application dated February 23, 2007.

The Need for the Proposed Action

10 CFR 50.46 and 10 CFR Part 50, Appendix K make no provisions for use of fuel rods clad in a material other than Zircaloy or ZIRLO. Since the material specifications of the advanced zirconium-based and M5™ alloys differ from the specification for Zircaloy or ZIRLO, a plant-specific exemption is required to support the use of the four LFAs for Calvert Cliffs 1. If the exemption were not approved, the licensee would not gain practical experience in order to assess performance of the cladding material at higher burnups. The proposed action is needed to support future fuel load capabilities by allowing the use of higher enriched fuel, which can provide the flexibility of extending fuel irradiation.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would continue to satisfy the underlying purpose of 10 CFR 50.46 and 10 CFR Part 50, Appendix K and will not present an undue risk to the public health and safety. Previously, the Westinghouse safety evaluation (WCAP–15874–NP, Revision 0, ''Safety Analysis Report for Use of Improved Zirconium-based Cladding Materials in Calvert Cliffs Unit 2 Batch T Lead Fuel Assemblies,'' dated April 2002) and approved Framatome ANP topical report (BAW–10227P–A, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR [Pressurized Water Reactor] Reactor Fuel,'' Framatome Cogema Fuels, February 2000) demonstrated that the predicted chemical, mechanical, and material performance of the advanced zirconium and M5™ cladding are acceptable under all anticipated operational occurrences and postulated accidents. The LFAs will be placed in core locations to permit higher burnups to be achieved for these LFAs. In the event that cladding failures occur in the LFAs, the environmental impact would be minimal and is bounded by the previous environmental assessments.

The exemption, which would be effective during the Unit 1 Cycle 19 fuel cycle, would allow the fuel to be irradiated to levels above 60 gigawatt days per metric ton (GWd/MTU), but not to exceed 70 GWd/MTU. The safety considerations associated with reactor operation with extended irradiation have been evaluated by the NRC staff.

The NRC staff has concluded that such changes would not adversely affect plant safety, and would have no adverse effect on the probability of any accident. For accidents in which the core remains intact, fuel rod integrity has been shown to be unaffected by the extended burnup under consideration; therefore, the probability of an accident will not be affected. For accidents that involve damage or melting of the fuel in the reactor core, the increased burnup may slightly change the mix of fission products that could be released in the event of a serious accident, but because the radionuclides contributing most to the dose are short-lived, increased burnup would not have an effect on the consequences of a serious accident beyond those accident scenarios previously evaluated. Increases in projected consequences of postulated accidents associated with fuel burnup up to 70 GWd/MTU are not considered significant, and remain well below regulatory limits.

Regulatory limits on radiological effluent releases are independent of burnup. The requirements of 10 CFR 50.36a and Appendix I to 10 CFR Part 50 ensure that any release of gaseous, liquid, or solid radiological effluents to unrestricted areas are kept ''as low as reasonably achievable.'' Therefore, the NRC staff concludes that during routine operations, there will be no significant increase in the amount of gaseous radiological effluents released into the environment as a result of the proposed action, nor will there be a significant increase in the amount of liquid radiological effluents or solid radiological effluents released into the environment.

No significant increase in the allowable individual or cumulative occupational radiation exposure will occur. The impact to workers is expected to be reduced with higher irradiation due to the need for less frequent outages for fuel changes and less frequent fuel shipments to and from reactor sites.

The use of extended irradiation will not change the potential environmental impacts of incident-free transportation of spent nuclear fuel or the accident risks associated with spent fuel transportation if the fuel is cooled for 5 years after discharge from the reactor. A report by Pacific Northwest National Laboratory (PNNL) for the NRC (NUREG/CR–6703, ''Environmental Effects of Extending Fuel burnup Above 60 Gwd/MTU,'' January 2001), concluded that doses associated with incident-free transportation of spent fuel with burnup to 75 GWd/MTU are bounded by the doses given in 10 CFR 51.52, Table S–4, for all regions of the country if dose rates from the shipping casks are maintained within regulatory limits. Increased fuel burnup will decrease the annual discharge of fuel to the spent fuel pool, which will postpone the need to remove spent fuel from the pool.

With regard to potential non-radiological environmental impacts of reactor operation with extended irradiation, the proposed changes involve systems located within the restricted area as defined in 10 CFR Part 20. Therefore, the proposed action does not result in any significant changes to land use or water use, or result in any significant changes to the quality or quantity of effluents. The proposed action does not affect non-radiological

plant effluents, and no changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to endangered or threatened species, or to the habitats of endangered or threatened species are expected. The proposed action does not have a potential to affect any historical or archaeological sites.

The proposed action will not change the method of generating electricity or the method of handling any influents from the environment or non-radiological effluents to the environment. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the amendments.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

For more detailed information regarding the environmental impacts of extended fuel burnup, please refer to the study conducted by Pacific Northwest National Laboratories for the NRC, which is entitled, ''Environmental Effects of Extending Fuel Burnup Above 60 GWd/MTU'' (NUREG/CR–6703, PNL–13257, January 2001).

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Calvert Cliffs 1 and 2, dated April 1973, and the Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Supplement 1, Regarding the Calvert Cliffs Nuclear Power Plant (NUREG–1437, Supplement 1), dated October 1999.

Agencies and Persons Consulted

In accordance with its stated policy, on November 20, 2007, the staff consulted with the Maryland State official, Mr. R. McLean of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated February 23, 2007, available in the NRC's Agencywide Documents Access and Management System (ADAMS) (Accession Number ML070580103 and ML070580107). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of December, 2007.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–24399 Filed 12–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

PPL Susquehanna, LLC; Susquehanna Steam Electric Station, Units 1 and 2 Final Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level; Correction

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Final Environmental Assessment and Finding of No Significant Impact; Correction.

SUMMARY: This document corrects an Environmental Assessment appearing in the **Federal Register** on December 5, 2007 (72 FR 68598). This action is necessary to correctly declare the Environmental Assessment as a final document (in lieu of a draft) with no action for noticing for public comment. The corrected Environmental Assessment is provided as follows:

The NRC has prepared a final Environmental Assessment as part of its evaluation of a request by PPL Susquehanna, LLC for a license amendment to increase the maximum thermal power at Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), from 3,489 megawatts-thermal (MWt) to 3,952 MWt at each unit. This represents a power increase of approximately 13 percent thermal power. As stated in the NRC staff's position paper dated February 8, 1996, on the Boiling-Water Reactor Extended Power Uprate (EPU) Program, the NRC staff (the staff) will prepare an environmental impact statement if it believes a power uprate would have a significant impact on the human environment. The staff did not identify any significant impact from the information provided in the licensee's EPU application for Susquehanna Steam Electric Station, Units 1 and 2, or the staff's independent review; therefore, the staff is documenting its environmental review in an Environmental Assessment. Also, in accordance with the position paper, the final Environmental Assessment and Finding of No Significant Impact is being published in the **Federal Register**.

The NRC published a draft Environmental Assessment and finding of no significant impact on the proposed action for public comment in the **Federal Register** on August 21, 2007 (72 FR 46670). One set of comments were received on the draft Environmental Assessment from PPL Susquehanna, LLC by letter dated September 19, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML072820283). These comments were clarifications and editorial corrections to the draft Environmental Assessment. Based on these comments, the NRC staff revised the appropriate sections of the final Environmental Assessment.

Environmental Assessment

Plant Site and Environs

SSES is located just west of the Susquehanna River approximately 5 miles northeast of Berwick, in Luzerne County, Pennsylvania. In total, SSES majority owner and licensed operator,

PPL Susquehanna, LLC (PPL, the licensee), owns 2,355 acres of land on both sides of the Susquehanna River. Generally, this land is characterized by open deciduous woodlands interspersed with grasslands and orchards. Approximately 487 acres are used for generation facilities and associated maintenance facilities, laydown areas, parking lots, and roads. Approximately 130 acres are leased to local farmers. PPL maintains a 401-acre nature preserve, referred to as the Susquehanna Riverlands, which is located between SSES and the river; U.S. Route 11 separates the Susquehanna Riverlands from the plant site. The land on the west side of the river is about 1,573 acres and Gould Island, a 65-acre island just north of SSES on the Susquehanna River is currently jointly owned between PPL (90%) and Allegheny Electric Cooperative (10%). Also, PPL currently owns an additional 717 acres of mostly undeveloped land, which includes natural recreational, and wildlife areas on the east side of the river (Reference 10).

SSES is a two-unit plant with General Electric boiling-water reactors and generators. NRC approved the Unit 1 operating license on July 17, 1982, and commercial operation began June 8, 1983. The Unit 2 operating license was issued on March 3, 1984, and commercial operation began February 12, 1985. Units 1 and 2 both currently operate at 3,489 MWt (Reference 8). The units share a common control room, refueling floor, turbine operating deck, radwaste system, and other auxiliary systems (Reference 9).

SSES uses a closed-cycle heat dissipation system (two natural-draft cooling towers) to transfer waste heat from the circulating water system to the atmosphere. The circulating water and the service water systems draw water from, and discharge to, the Susquehanna River. The river intake structure is located on the western bank of the river and consists of two water entrance chambers with 1-inch, on-center vertical trash bars and ⅜-inch-mesh traveling screens. A low-pressure screen-wash system periodically operates to release aquatic organisms and debris impinged on the traveling screens to a pit with debris removal equipment that collects material into a dumpster for offsite disposal. Cooling tower blowdown, spray pond overflow, and other permitted effluents are discharged to the Susquehanna River through a buried pipe leading to a submerged discharge diffuser structure, approximately 600 feet downstream of the river intake structure. The diffuser pipe is 200-feet long, with the last 120 feet containing 72 four-inch portals that direct the discharge at a 45-degree angle upwards and downstream. Warm circulating water from the cooling towers can be diverted to the river intake structure to prevent icing; this usually occurs from November through March on an as-needed basis (Reference 10).

For the specific purpose of connecting SSES to the regional transmission system, there are approximately 150 miles of transmission line corridors that occupy 3,341 acres of land. The corridors pass through land that is primarily agricultural and forested with low population densities. Two 500-kilovolt (kV) lines and one 230-kV line connect SSES to the electric grid, with approximately 2.3 miles of short ties in the immediate plant vicinity to connect SSES to the 230-kV system. The Stanton-Susquehanna #2 230-kV transmission line corridor runs northeast from the plant for approximately 30 miles and ranges from 100–400 feet wide. The Susquehanna-Wescosville-Alburtis 500-kV transmission line corridor ranges from 100 to 350 feet wide and runs generally southeast from the plant for approximately 76 miles; the Sunbury-Susquehanna #2 500-kV transmission line corridor is approximately 325 feet wide and runs 44 miles west-southwest from the plant. The transmission line corridors cross the following Pennsylvania counties: Luzerne (the location of SSES), Carbon, Columbia, Lehigh, Northampton, Northumberland, Montour, and Snyder. These transmission lines are currently owned by PPL Electric Utilities with the exception of 42.3 miles of the 44.2 mile Sunbury—Susquehanna #2 500 kV line which is currently owned by Allegheny Electric Cooperative. All of these lines however, are integral to the larger transmission system, and as such PPL Electric Utilities plans to operate and maintain these lines indefinitely. Except for the short ties on the plant site, the lines would likely remain a permanent part of the transmission system even after SSES is decommissioned (Reference 10).

Identification of the Proposed Action

By letter dated October 11, 2006, PPL proposed amendments to the operating licenses for SSES Units 1 and 2 to increase the maximum thermal power level of both units by approximately 13 percent thermal power, from 3,489 MWt to 3,952 MWt (Reference 8). The change is considered an EPU because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. This amendment would allow the heat output of the reactor to increase, which would increase the flow of steam to the turbine. This would result in the increase in production of electricity and the amount of waste heat delivered to the condenser, and an increase in the temperature of the water being discharged to the Susquehanna River.

PPL plans to implement the proposed EPU in two phases to obtain optimal fuel utilization and to ensure that manageable core thermal limits are maintained. The core thermal power level of Unit 2 would be increased by approximately 13 percent following the spring 2009 refueling outage. Unit 1's core thermal power level would be increased in two stages of about 7 percent each during the spring 2008 and spring 2010 refueling outages (Reference 8).

The original operating licenses for Units 1 and 2 authorized operation up to a maximum power level of 3,293 MWt per unit. Since the units went online, SSES has implemented two power uprates. Stretch uprates (4.5 percent each) were implemented in 1994 (Unit 2) and 1995 (Unit 1), increasing the licensed thermal power levels of SSES Units 1 and 2 from 3,293 MWt to 3,441 MWt. Two separate NRC environmental assessments each resulted in a finding of no significant impact and determined that these actions ''* * * would have no significant impact on the quality of the human environment.'' These decisions were published in the **Federal Register**, Vol. 59, No. 53, pp. 12990–12992 and Vol. 60, No. 9, pp. 3278–3280 (Reference 12, 13). In 2001, a Measurement Uncertainty Recapture (MUR) uprate of 1.4 percent increased the licensed thermal power levels of SSES Units 1 and 2 to 3,489 MWt. The NRC environmental assessment for this action also resulted in a finding of no significant impact and was published in the **Federal Register**, Vol. 66, No. 122, pp. 33716–33717 (Reference 14).

The Need for the Proposed Action

SSES is within the transmission area controlled by PJM Interconnection, L.L.C. (PJM). PJM operates the largest regional transmission territory in the U.S., currently serving a 164,260-square-mile area in all or parts of 13 states and the District of Columbia, representing approximately 163,806 megawatts electrical (MWe) of generating capacity. PJM has forecasted that the summer unrestricted peak load in the Mid-Atlantic geographic zone where SSES is located would grow at an annual average rate of 1.8 percent for the next 10 years. This represents an increase in

peak load of almost 6,000 MWe from 2005 to 2010, when the proposed SSES EPU is scheduled to be completed. The proposed EPU would add an average of 205 MWe of base load generation to the grid from both Units 1 and 2. This added electricity is projected to be enough to meet the power needs of approximately 195,000 homes and is forecasted to be produced for the PJM grid at a cost lower than the projected market price (Reference 9).

PJM uses a queue system to manage requests to add or remove generation from the regional transmission system. SSES submitted an application to PJM for the EPU additional generation on May 19, 2004. The PJM Interconnection Service Agreements and Construction Service Agreements were signed for Unit 2 on July 7, 2005, and for Unit 1 on January 20, 2006 (Reference 9).

Environmental Impacts of the Proposed Action

At the time of issuance of the operating licenses for SSES, the staff noted that any activity authorized by the licenses would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of SSES, which was issued by the NRC in June 1981. This Environmental Assessment summarizes the radiological and non-radiological impacts in the environment that may result from the proposed action.

Non-Radiological Impacts

Land Use Impacts

Potential land use impacts due to the proposed EPU include impacts from construction and plant modifications at SSES. While some plant components would be modified, most plant changes related to the proposed EPU would occur within existing structures, buildings, and fenced equipment yards housing major components within the developed part of the site. No new construction would occur outside of existing facilities, and no expansion of buildings, roads, parking lots, equipment storage areas, or transmission facilities would be required to support the proposed EPU with the following exceptions.

The 230-kV switchyard located on PPL property across the river from the station, and the 500-kV switchyard located on the plant site would both be expanded to house additional capacitor banks. The site road adjacent to the 500-kV switchyard would be moved to accommodate this expansion. Both switchyard modifications would require no land disturbance outside the power block area. Relocation of the road adjacent to the 500-kV switchyard would occur in a previously developed area of the plant site, resulting in no or little impact to land use. In addition, the turbine building may be expanded to allow for the installation of condensate filters, and additional aboveground storage tanks may be required to support cooling tower basin acid injection. If required, storage tank installation and turbine building expansion would be located in the developed part of the site (Reference 8, 9). An above ground shielded storage facility will be constructed onsite within the Protected Area to store the original steam dryers.

Existing parking lots, road access, lay-down areas, offices, workshops, warehouses, and restrooms would be used during construction and plant modifications. Therefore, land use conditions would not change at SSES. Also, there would be no land use changes along transmission lines (no new lines would be required for the proposed EPU), transmission corridors, switch yards, or substations. Because land use conditions would not change at SSES and because any disturbance would occur within previously disturbed areas within the plant site, there would be little or no impact to aesthetic resources (except during outside construction) and historic and archeological resources in the vicinity of SSES.

The impacts of continued operation of SSES Units 1 and 2 combined with the proposed EPU would be bounded by the scope of the original FES for operation, ''Final Environmental Statement Related to the Operation of Susquehanna Steam Electric Station, Units 1 and 2,'' dated 1981, and therefore, the staff concludes that there would be no significant impacts to land use, aesthetics, and historic and archaeological resources from the proposed EPU.

Non-Radiological Waste

SSES generates both hazardous and non-hazardous waste. Under the Resource Conservation and Recovery Act (RCRA) Subtitle C, SSES is classified as a Large Quantity Generator of hazardous waste, including spent batteries, solvents, corrosives, and paint thinners. According to the Environmental Protection Agency's *Envirofacts Warehouse* database, there are no RCRA violations listed for SSES related to the management of these hazardous wastes (Reference 11). Non-hazardous waste is managed by SSES's current program and includes municipal waste, maintenance waste, wood, and non-friable asbestos. Plant modifications necessary for the proposed EPU may result in additional hazardous and non-hazardous waste generation; however, all wastes would continue to be managed by the waste management program currently in place at SSES, which is designed to minimize hazardous waste generation and promote recycling of waste whenever possible (Reference 9) and subject to state (commonwealth) and Federal oversight. As such, the staff concludes there would be no impacts from additional non-radiological waste generated as a result of the proposed EPU.

Cooling Tower Impacts

SSES operates two natural draft cooling towers to transfer waste heat from the circulating water system (which cools the main condensers) to the atmosphere. No additional cooling tower capacity is planned to accommodate the proposed EPU. However, additional aboveground storage tanks could be required to support cooling tower basin acid injection. If built, these tanks would be located in the developed part of the plant site (Reference 9).

Aesthetic impacts associated with cooling tower operation following implementation of the proposed action would be similar to those associated with current operating conditions and include noise and visual impacts from the plume such as fogging and icing.

No significant increase in noise is anticipated for cooling tower operation following the proposed EPU. The FES for operation evaluated the potential noise impacts of operation of SSES and determined that pump and motor noise from the cooling water system would not exceed ambient (baseline) levels in offsite areas and that cooling tower noise would be audible for no more than a mile offsite to the west, southwest, and southeast of the station. PPL conducted an initial noise survey in 1985 after commercial operation of both units began, and again in 1995 following the stretch uprate. The 1995 noise measurements were similar to those recorded in 1985, and PPL received no noise complaints following implementation of the stretch uprate. The staff concludes that the proposed EPU, like the stretch uprate, would not produce measurable changes in the character, sources, or intensity of noises generated by the station's cooling water system or cooling towers (Reference 9).

Conclusions reached in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS),'' Volumes 1 and 2, dated 1996, apply to the proposed action regarding cooling tower impacts on crops, ornamental vegetation, and

native plants. The GEIS concluded that natural-draft cooling towers release drift and moisture high into the atmosphere where they are dispersed over long distances, and increased fogging, cloud cover, salt drift, and relative humidity have little potential to affect crops, ornamental vegetation, and native plants.

Impacts associated with continued cooling tower operation at SSES following the proposed EPU, including noise, fogging, cloud cover, salt drift, and icing would not change significantly from current impacts. Therefore, the staff concludes there would be no significant impacts associated with cooling tower operation for the proposed action.

Transmission Facility Impacts

The potential impacts associated with transmission facilities for the proposed action include changes in transmission line corridor maintenance and electric shock hazards due to increased current. The proposed EPU would not require any new transmission lines and would not require changes in the maintenance and operation of existing transmission lines or substations. Corridor maintenance practices (including vegetative management) would not be affected by the proposed EPU.

The proposed EPU would require the installation of additional capacitor banks in the 500- and 230-kV switchyards, and PPL plans to conduct a power delivery environmental risk identification evaluation prior to these installations. The capacitor bank installations are the only modification of transmission facilities that would accompany the proposed EPU. The only operational change to transmission lines resulting from the proposed EPU would be increased current; voltage would remain unchanged. As PPL states in its October 11, 2006, application, page 7–2, ''increased current may cause transmission lines to sag more, but there would still be adequate clearance between energized conductors and the ground to prevent electrical shock.'' Additionally, PPL has evaluated all related transmission facilities and found these facilities to be within acceptable design parameters (Reference 9).

The National Electric Safety Code (NESC) provides design criteria that limit hazards from steady-state currents. The NESC limits the short-circuit current to ground to less than 5 milliamps. As stated above, there would be an increase in current passing through the transmission lines associated with the increased power level of the proposed EPU. The higher electrical current passing through the transmission lines would cause an increase in electromagnetic field strength. However, with the proposed increase in power level, the impact of exposure to electromagnetic fields from the offsite transmission lines would not be expected to increase significantly over the current impact. The transmission lines meet the applicable shock prevention provisions of the NESC. Therefore, even with the small increase in current attributable to the proposed EPU, adequate protection is provided against hazards from electric shock.

The impacts associated with transmission facilities for the proposed action would not change significantly from the impacts associated with current plant operation. There would be no physical modifications to the transmission lines, transmission line corridor maintenance practices would not change, there would be no changes to transmission line corridors or vertical clearances, electric current passing through the transmission lines would increase only slightly, and capacitor bank modifications would occur only within the existing power blocks. Therefore, the staff concludes that there would be no significant impacts associated with transmission facilities for the proposed action.

Water Use Impacts

Potential water use impacts from the proposed action include hydrological alterations to the Susquehanna River and changes to plant water supply. SSES uses cooling water from the Susquehanna River and discharges water back to the river at a point approximately 600 feet downstream of the intake structure. River water enters the plant cooling system via cooling tower basins and provides water to the circulating water and service water systems. SSES uses a closed-cycle, natural-draft cooling tower heat dissipation system to remove waste heat from the main condensers; cooling tower blowdown is discharged back to the Susquehanna River (Reference 9).

No changes to the cooling water intake system are expected during the proposed action. While the volume of intake embayments would not change, the intake flow rate would increase from an average of 58.3 million gallons per day (gpd) to an average of 60.9 million gpd, as the amount of time all four river intake pumps operate would increase. This represents a 4.5-percent increase in intake water withdrawn from the Susquehanna River and is not expected to alter the hydrology of the river significantly (Reference 9). The maximum withdrawal rate possible as a result of the proposed EPU is 65.4 million gpd, which was calculated using worst-case meteorological conditions (NRC 2006). This represents a 12.2-percent increase in intake water withdrawn from the river and is not expected to alter the hydrology of the river significantly.

The amount of consumptive water usage due to evaporation and drift of cooling water through the cooling towers is expected to increase from a monthly average of 38 million gpd to 44 million gpd. This represents a 15.7-percent increase over current usage. Based on the Susquehanna River's average annual flow rate of 9,427 million gpd, the proposed EPU would result in an average annual loss of 0.5 percent of river water at that location. During low-flow conditions, which usually occur in late August, the average evaporative loss at SSES may approach 1 percent of the low-flow river value (Reference 9). The staff concludes that the amount of water consumed by SSES under the proposed EPU conditions would not result in significant alterations to Susquehanna River flow patterns at this location.

Consumptive water usage at SSES is regulated by the Susquehanna River Basin Commission (SRBC), an independent agency that manages water usage along the entire length of the Susquehanna River. The current permit granted for SSES operation by SRBC is for average monthly consumptive water usage up to 40 million gpd (permit #19950301 EPUL–0578). In December 2006, PPL submitted an application to SRBC to eliminate the 40 million gpd average monthly limit and to approve a maximum daily river water withdrawal of 66 million gpd (Reference 15). SRBC is currently reviewing PPL's application and will make a decision independent of the NRC whether to allow the increased consumptive water usage required to implement the proposed EPU. The SRBC permit is required for plant operation, and PPL must adhere to the prescribed water usage limits and any applicable mitigative measures.

No changes to the cooling water intake system and the volume of intake embayment are expected for the proposed EPU, but the average intake flow would increase by 4.5 percent. The staff concludes this increase would not alter significantly the hydrology of the Susquehanna River. The proposed EPU would result in a small increase in the amount of Susquehanna River consumptive water usage due to evaporative losses. However, the increased loss would be insignificant relative to the flow of the Susquehanna River, and SRBC would continue to

regulate SSES's consumptive water usage. With respect to the proposed action, the staff concludes there would be no significant impact to the hydrological pattern on the Susquehanna River, and there would be no significant impact to the plant's consumptive water supply.

Discharge Impacts

Potential impacts to the Susquehanna River from the SSES discharge include increased turbidity, scouring, erosion, and sedimentation. These discharge-related impacts apply to the region near the discharge structure due to the large volume of cooling water released to the river. However, since the proposed EPU would result in no significant changes in discharge volume or velocity, there would be no expected changes in turbidity, scouring, erosion or sedimentation related to the proposed EPU.

Surface and wastewater discharges at SSES are regulated through the National Pollutant Discharge Elimination System (NPDES) permit (No. PA0047325), which is issued and enforced by the Pennsylvania Department of Environmental Protection (DEP) Bureau of Water Supply and Wastewater Management. The DEP periodically reviews and renews the NPDES permit; SSES's current NPDES permit was effective beginning September 1, 2005, and is valid through August 31, 2010. The NPDES permit sets water quality standards for all plant discharges to the Susquehanna River, including limits on free available chlorine, total zinc, and total chromium in cooling tower blowdown. According to Pennsylvania's Environmental Facility Application Compliance Tracking System (eFACTS), there are no past or current NPDES violations listed for SSES (Reference 4).

While the proposed EPU would increase the amount of cooling tower blowdown to the Susquehanna River, there is no expected increase in associated biocides, solvents, or dissolved solids entering the river, and SSES would continue to adhere to the water quality standards set within the NPDES permit. The NPDES permit does not contain thermal discharge temperature limits, but SSES must adhere to Susquehanna River temperature limits prescribed by Pennsylvania Code water quality standards (Reference 1). Thermal discharge effects and applicable Pennsylvania Code water quality standards will be discussed further in the Impacts on Aquatic Biota section.

No expected changes in turbidity, scouring, erosion or sedimentation are expected as a result of the proposed EPU. Surface and wastewater discharges to the Susquehanna River would continue to be regulated by the Pennsylvania DEP. Any discharge-related impacts for the proposed action would be similar to current impacts from plant operation, and therefore, the staff concludes the proposed action would not result in significant impacts on the Susquehanna River from cooling water discharge.

Impacts on Aquatic Biota

The potential impacts to aquatic biota from the proposed EPU include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance. The aquatic species evaluated in this final Environmental Assessment are those in the vicinity of the SSES cooling water intake and discharge structures along the Susquehanna River, and those that occur in water bodies crossed by transmission lines associated with SSES.

The licensee has conducted aquatic biota studies of the Susquehanna River upstream and downstream of SSES since 1971. The studies assessed water quality, algae (periphyton and photoplankton), macroinvertebrates, and fish from 1971 to 1994, with annual fish studies beginning in 1976. The Susquehanna River in the vicinity of SSES has both coolwater and warmwater fishes, primarily consisting of minnows (*Cyprinidae*), suckers (*Catastomidae*), catfish (*Icaluridae*), sunfish (*Centrarchidae*), darters and perch (*Percidae*). There are also records of smallmouth bass (*Micropterus dolomieu*), walleye (*Sander vitreus*), and channel catfish (*Ictalurus punctatus*) found in proximity to SSES. Monitoring of benthic macroinvertebrates and biofouling mollusks was also included in the studies. No zebra mussels (*Dreissena polymorpha*) have been recorded at SSES or in the vicinity of the North Branch of the Susquehanna River; however, Asiatic clams (*Corbicula fluminea*) have been found in the North Branch of the Susquehanna River for several years and were collected by scuba divers in the SSES engineered safeguard service water spray pond in July 2005.

No sensitive aquatic species are known to occur at or near SSES (Reference 9); however, the 1981 FES for operation indicated that two endangered and two rare fish listed by the Pennsylvania Fish Commission (now the Pennsylvania Fish & Boat Commission) have ranges that fall within SSES transmission line corridors (NRC 1981). PPL has provided the staff with a vegetative management program for its transmission line corridors that states no herbicides shall be applied within 50 feet of any water body, except stump treatments and herbicides approved for watershed/aquatic use. Additionally, the transmission line corridor maintenance activities in the vicinity of stream and river crossings employ procedures to minimize erosion and shoreline disturbance while encouraging vegetative cover (Reference 7).

In addition to setting water quality parameters for surface and wastewater discharges, the SSES NPDES permit (PA–0047325) also regulates entrainment and impingement of aquatic species at SSES. Because SSES uses a closed-cycle, recirculating cooling water system, entrainment and impingement impacts on aquatic biota resulting from the proposed EPU are not expected to be significant.

The proposed EPU would require additional water withdrawal from the Susquehanna River for increased cooling tower evaporative losses and other plant needs. The average increase in daily water withdrawal from the Susquehanna River would be approximately 4.4 percent, from 58.3 million gpd to 60.9 million gpd. PPL also reported a maximum daily water withdrawal estimate of 65.4 million gpd (an 11.2 percent increase), which would only occur during worst-case meteorological conditions (Reference 15). Under the proposed EPU conditions, the average increase in water withdrawal would result in the impingement of approximately one additional fish per day (from 21 to 22) and entrainment of approximately 15,972 additional larvae per day (from 363,000 to 378,000) during spawning season. These small increases in entrainment and impingement related to the proposed EPU would result in no significant impact to the Susquehanna River aquatic community (Reference 9).

Effective July 9, 2007, the EPA suspended the Phase II rule (NRC 2007b). As a result, all permits for Phase II facilities should include conditions under Section 316(b) of the Clean Water Act that are developed on a Best Professional Judgment basis, rather than best technology available. Best Professional Judgment is used by National Pollutant Discharge Elimination System (NPDES) permit writers to develop technology-based permit conditions on a case-by-case basis using all reasonably available and relevant data. Any site-specific mitigation required under the NPDES permitting process would result in a

reduction in the impacts of continued plant operations.

The NPDES permit issued by the Pennsylvania DEP does not specify thermal discharge limits; however, the amount and temperature of heated effluent discharged to the Susquehanna River is governed by Section 93.7 of Pennsylvania Code, which places restrictions on waters designated ''Warm Water Fisheries.'' During the July 1–August 31 time frame, the highest river water temperature allowable is 87 degrees Fahrenheit (°F), with lower temperature limits during other parts of the year (Reference 1). In the 1981 FES for operation, the NRC performed an analysis of SSES blowdown plume characteristics. The analysis concluded that blowdown temperatures during all four seasons were lower than the maximum river temperatures set by Section 93.7. The location and design of the SSES cooling water discharge structure and the high flow rate of the Susquehanna River allow for sufficient mixing and cooling of heated effluent. Using conservative assumptions similar to those used in the original FES thermal plume analysis, PPL calculated that after implementation of the proposed EPU, blowdown temperatures would increase by 2 °F. This would result in a 0.6 °F increase in the maximum expected temperature at the edge of the thermal plume mixing zone (maximum temperature 86.5 °F). The staff concludes that the increase in thermal discharge temperature and volume resulting from the proposed EPU would still fall within the guidelines prescribed by the original FES for operation (NRC 1981).

Liquid effluents discharged to the Susquehanna River include cooling tower blowdown, spray pond overflow, liquid rad waste treatment effluents, and surface and wastewater discharges. The Commonwealth of Pennsylvania regulates these discharges through SSES's NPDES permit, which sets water quality standards for all plant discharges to the Susquehanna River. Ecological studies of the Susquehanna River conducted for the licensee indicate that river water quality in the vicinity of SSES continues to improve. From 1973 through 2002, there was a significant decreasing trend in turbidity, sulfate, total iron, and total suspended solids; and a significant increasing trend in river temperature, pH, total alkalinity, and dissolved oxygen. A reduction in acid-mine drainage pollutants and improvements in upstream waste-water treatment have likely contributed to the overall-improved river ecosystem health (Ecology III 2003).

SSES operates a closed-cycle cooling water system, and as such, the staff concludes that impacts to aquatic biota in the Susquehanna River from entrainment, impingement, and thermal discharge resulting from the proposed EPU would not be significant. The Pennsylvania DEP will continue to regulate the performance of the SSES cooling water system and surface and wastewater discharges through the NPDES permit and Pennsylvania Code designed to protect warm water fisheries. Furthermore, SSES transmission line corridor maintenance practices would not change upon implementation of the proposed EPU; thus, the staff concludes there would be no significant impacts to aquatic species associated with transmission line corridor maintenance.

Impacts on Terrestrial Biota

Potential impacts to terrestrial biota from the proposed EPU include impacts due to transmission line corridor maintenance and any planned new construction. The natural communities at SSES and in the surrounding areas consist of river floodplain forest, upland forest, marshes, and wetlands. The river floodplain forest at SSES is dominated by silver maple (*Acer saccharinum*), river birch (*Betula nigra*), and Northern red oak (*Quercus rubra*). The upland forest is dominated by Virginia pine (*Pinus virginiana*), sweet birch (*Betula lenta*), flowering dogwood (*Cornaceae cornus*), white oak (*Fagaceae quercus*), Northern red oak, black oak (*Q. velutina*), and yellow poplar (*Liriodendron tulipifera*). The marshes are dominated by a variety of emergent vegetation such as sedges (*Cyperaceae*), bulrush and cattail (*Typhaceae*), and cutgrass (*Poaceae*) (Reference 9). Although wetlands do occur at the SSES site, none of the wetlands would be affected by the proposed action.

As stated in the Cooling Tower Impacts section, no significant increase in noise is anticipated for cooling tower operation following the proposed EPU, and as such, biota would not be impacted. The staff agrees with the conclusions reached in the GEIS regarding bird collisions with cooling towers: avian mortality due to collisions with cooling towers is considered to be of small significance if the losses do not destabilize local populations of any species and there is no noticeable impairment of its function with the local ecosystem (NRC 1996).

The proposed action would not involve new land disturbance outside of the existing power block or developed areas, and as discussed in the Transmission Facilities Impacts section, there would be no changes to transmission line corridor maintenance practices. Thus, the staff concludes that there would be no significant impacts to terrestrial species or their habitat associated with the proposed action, including transmission line right-of-way maintenance.

Impacts on Threatened and Endangered Species

Potential impacts to threatened and endangered species from the proposed action include the impacts assessed in the aquatic and terrestrial biota sections of this Environmental Assessment. These impacts include impingement, entrainment, thermal discharge effects, and impacts from transmission line right-of-way maintenance for aquatic and terrestrial species. A review of databases maintained by the U.S. Fish and Wildlife Service (FWS) and the Pennsylvania Natural Heritage Program indicate that several animal and plant species that are federally or Commonwealth-listed as threatened or endangered occur in the vicinity of SSES and its associated transmission line corridors. Informal consultation with FWS Pennsylvania Field Office regarding the proposed EPU's potential impact on threatened or endangered species is ongoing.

Four species listed as threatened or endangered under the Endangered Species Act and 24 species that are listed by the Commonwealth of Pennsylvania as threatened or endangered occur within the counties where SSES and its associated transmission line corridors are located. These species are listed below in Table 1.

TABLE 1.—ENDANGERED AND THREATENED SPECIES THAT COULD OCCUR IN THE VICINITY OF SSES OR IN COUNTIES CROSSED BY SSES TRANSMISSION LINES

Scientific name	Common name	Federal status*	State status*
Mammals:			
Neotoma magister	Allegheny woodrat	—	T
Myotis sodalis	Indiana bat	E	E
Myotis leibii	Small-footed myotis	—	T
Sciurus niger	Eastern fox squirrel	—	T
Birds:			
Ardia alba	Great egret	—	E
Asio flammeus	Short-eared owl	—	E
Bartramia longicauda	Upland sandpiper	—	T
Botaurus lentiginosus	American bittern	—	E
Chlidonias niger	Black tern	—	E
Cistothorus platensis	Sedge wren	—	T
Falco peregrinus	Peregrine falcon	—	E
Haliaeetus leucocephalus	Bald eagle	T	E
Ixobrychus exilis	Least bittern	—	E
Pandion haliaetus	Osprey	—	T
Reptiles:			
Clemmys muhlenbergii	Bog Turtle	T	E
Invertebrates:			
Enodia anthedon	Northern peary-eye	—	VS
Euphydryas phaeton	Baltimore checkerspot	—	VS
Poanes massasoit	Mulberry wing	—	V
Polites mystic	Long dash	—	V
Speyeria idalia	Regal fritillary	—	E
Speyeria aphrodite	Aphrodite fritillary	—	VS

* T = Threatened, E = Endangered, V = Vulnerable, VS = Vulnerable to Apparently Secure — = Not Listed.
(Sources: References 3, 5, 6, 16.)

The proposed EPU would involve no new land disturbance, and any construction necessary would be minimal and would only occur in previously developed areas of SSES. Additionally, no changes would be made to the transmission line corridor maintenance program, including vegetative maintenance. As such, the staff concludes that the proposed action would have no significant impact on federally- or Commonwealth-listed species in the vicinity of SSES and its transmission line corridors.

Social and Economic Impacts

Potential socioeconomic impacts due to the proposed EPU include changes in the payments in lieu of taxes for Luzerne County and changes in the size of the workforce at SSES. Currently SSES employs approximately 1,200 full-time staff, 89 percent of whom live in Luzerne or Columbia Counties, and approximately 260 contract employees. During outages, approximately 1,400 personnel provide additional support (Reference 9).

The proposed EPU is not expected to increase the size of the permanent SSES workforce, since proposed plant modifications would be phased in during planned outages when SSES has the support of 1,400 additional workers. In addition, the proposed EPU would not require an increase in the size of the SSES workforce during future refueling outages. Accordingly, the proposed EPU would not have any measurable effect on annual earnings and income in Luzerne and Columbia Counties or on community services (Reference 9).

According to the 2000 Census, Luzerne and Columbia County populations were about 2.9 and 2.0 percent minority, respectively, which is well below the Commonwealth minority population of 13.2 percent. The poverty rates in 1999 for individuals living in Luzerne and Columbia Counties are 11.1 percent and 13.1 percent, respectively, which are slightly higher than the Commonwealth's average of 11.0 percent. Due to the lack of significant environmental impacts resulting from the proposed action, the proposed EPU would not have any disproportionately high and adverse impacts to minority or low-income populations (Reference 9).

In the past, PPL paid real estate taxes to the Commonwealth of Pennsylvania for power generation, transmission, and distribution facilities. Under authority of the Pennsylvania Utility Realty Tax Act (PURTA), real estate taxes collected from all utilities (water, telephone, electric, and railroads) were redistributed to the taxing jurisdictions within the Commonwealth. In Pennsylvania, these jurisdictions include counties, cities, townships, boroughs, and school districts. The distribution of PURTA funds was determined by formula and was not necessarily based on the individual utility's effect on a particular government entity (Reference 9).

In 1996, Electricity Generation Customer Choice and Competition Act became law, which allows consumers to choose among competitive suppliers of electrical power. As a result of utility restructuring, Act 4 of 1999 revised the tax base assessment methodology for utilities from the depreciated book value to the market value of utility property. Additionally, as of January 1, 2000, PPL was required to begin paying real estate taxes directly to local jurisdictions, ceasing payments to the Commonwealth's PURTA fund. PPL currently pays annual real estate taxes to the Berwick Area School District, Luzerne County, and Salem Township (Reference 9).

The proposed EPU could increase SSES's value, thus resulting in a larger allocation of the payment to the Berwick Area School District, Luzerne County, and Salem Township. Because the proposed EPU would increase the economic viability of SSES, the probability of early plant retirement would be reduced. Early plant retirement would be expected to have negative impacts on the local economy and the community by reducing tax payments and limiting local

employment opportunities for the long term (Reference 9).

Since the proposed EPU would not have any measurable effect on the annual earnings and income in Luzerne and Columbia Counties or on community services and due to the lack of significant environmental impacts on minority or low-income populations, there would be no significant socioeconomic or environmental justice impacts associated with the proposed EPU. Conversely, the proposed EPU could have a positive effect on the regional economy because of the potential increase in the tax payments received by the Berwick Area School District, Luzerne County, and Salem Township, due to the potential increase in the book value of SSES, and the increased long-term viability of SSES.

Summary

The proposed EPU would not result in a significant change in non-radiological impacts in the areas of land use, water use, cooling tower operation, terrestrial and aquatic biota, transmission facility operation, or social and economic factors. No other non-radiological impacts were identified or would be expected. Table 2 summarizes the non-radiological environmental impacts of the proposed EPU at SSES.

TABLE 2.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	No significant land-use modifications.
Non-Radiological Waste	Any additional hazardous and non-hazardous waste as a result of the proposed EPU would continue to be regulated by RCRA and managed by SSES's waste management program.
Cooling Tower	Impacts associated with continued cooling tower operation following the proposed EPU, including noise, fogging, cloud cover, salt drift, and icing would not change significantly from current impacts.
Transmission Facilities	No physical modifications to transmission lines; lines meet electrical shock safety requirements; no changes to transmission line corridor maintenance; small increase in electrical current would cause small increase in electromagnetic field around transmission lines; no changes to voltage.
Water Use	No configuration change to intake structure; increase in cooling water flow rate; increase in consumptive use due to evaporation; SRBC would continue to regulate consumptive water usage at SSES.
Discharge	Small increase in discharge temperature and volume; no increases in other effluents; discharge would remain within Pennsylvania water quality limits, and SSES would continue to operate under NPDES permit regulations.
Aquatic Biota	Small increases in entrainment and impingement are not expected to affect the Susquehanna River aquatic biota; increase in volume and temperature of thermal discharge would remain within original FES guidelines and below Pennsylvania Code Section 93.7 temperature limits; SSES would continue to operate under NPDES permit regulations with regard to entrainment and impingement.
Terrestrial Biota	No land disturbance or changes to transmission line corridor maintenance are expected; therefore, there would be no significant effects on terrestrial species or their habitat.
Threatened and Endangered Species	As evaluated for aquatic and terrestrial biota, no significant impacts are expected on protected species or their habitat.
Social and Economic	No change in size of SSES labor force required for plant operation or for planned outages; proposed EPU could increase payments to Luzerne County and book value of SSES; there would be no disproportionately high and adverse impact on minority and low-income populations.

Radiological Impacts

Radioactive Waste Stream Impacts

SSES uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that the discharges are in accordance with the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 20, and the design objectives of Appendix I to 10 CFR part 50 (Reference 9).

Minimal changes will be made to the waste treatment systems to handle the additional waste expected to be generated by the proposed EPU; the installation of an additional condensate filter and demineralizer. The gaseous, liquid, and solid radioactive wastes are discussed individually (Reference 9).

Gaseous Radioactive Waste and Offsite Doses

During normal operation, the gaseous effluent treatment system processes and controls the release of small quantities of radioactive noble gases, halogens, tritium, and particulate materials to the environment. The gaseous waste management system includes the offgas system and various building ventilation systems. The single year highest annual releases of radioactive material, for the time period 2000–2005 were; 2002 for noble gases with 9.68 Curies, 2001 for particulates and iodines with 0.0074 Curies, and 2004 for tritium with 160 Curies (Reference 9).

The licensee has estimated that the amount of radioactive material released in gaseous effluents would increase in proportion to the increase in power level (20 percent) (Reference 9). Based on experience from EPUs at other plants, the staff concludes that this is an acceptable estimate. The offsite dose to a member of the public, including the additional radioactive material that would be released from the proposed EPU, is calculated to still be well within the radiation standards of 10 CFR part 20 and the design objectives of Appendix I to 10 CFR part 50. Therefore, the staff concludes the increase in offsite dose due to gaseous effluent release following implementation of the proposed EPU would not be significant.

Liquid Radioactive Waste and Offsite Doses

During normal operation, the liquid effluent treatment system processes and controls the release of radioactive liquid effluents to the environment, such that the dose to individuals offsite are maintained within the limits of 10 CFR part 20 and the design objectives of Appendix I to 10 CFR part 50. The

liquid radioactive waste system is designed to process and purify the waste and then recycle it for use within the plant, or to discharge it to the environment as radioactive liquid waste effluent in accordance with facility procedures which comply with Commonwealth of Pennsylvania and Federal regulations. The single year highest radioactive liquid releases, for the time period 2000–2005 were: 2005 at 1,470,000 gallons, 2003 with 70.25 Curies of tritium, 2000 with 36.95 Curies of fission and activation products, and 2002 with 0.0003 Curies of dissolved and entrained gases (Reference 9).

Even though the EPU would produce a larger amount of radioactive fission and activation products and a larger volume of liquid to be processed, the licensee performed an evaluation which shows that the liquid radwaste treatment system would remove all but a small amount of the increased radioactive material. The licensee estimated that the volume of radioactive liquid effluents released to the environment and the amount of radioactive material in the liquid effluents would increase slightly (less than 1 percent) due to the proposed EPU. Based on experience from EPUs at other plants, the staff concludes that this is an acceptable estimate. The dose to a member of the public from the radioactive releases described above, increased by 1 percent, would still be well within the radiation standards of 10 CFR part 20 and the design objectives of Appendix I to 10 CFR part 50. Therefore, the staff concludes that there would not be a significant environmental impact from the additional amount of radioactive material generated following implementation of the proposed EPU.

Solid Radioactive Wastes

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite for permanent disposal. The volume of solid radioactive waste generated varied from about 2500 to almost 8000 cubic feet (ft^3) per year in the time period 2000–2005; the largest volume generated was 7980 ft^3 in 2003. The amount annual of radioactive material in the waste generated varied from 2500 to almost 190,000 Curies during that same period. The largest amount of radioactive material generated in the solid waste was 189,995 Curies in 2000 (Reference 9).

The proposed EPU would produce a larger amount of radioactive fission and activation products which would require more frequent replacement or regeneration of radwaste treatment system filters and demineralizer resins. The licensee has estimated that the volume of solid radioactive waste would increase by approximately 11 percent due to the proposed EPU (Reference 9). Based on experience from EPUs at other plants, the staff concludes that this is an acceptable estimate. The increased volume of the solid waste would still be bounded by the estimate of 10,400 ft^3 in the 1981 FES for operation. Therefore, the staff concludes that the impact from the increased volume of solid radwaste generated due to the proposed EPU would not be significant.

The licensee did not provide an estimate of the increase in the amount of radioactive solid waste in terms of Curies. However, for 4 of the 6 years between 2000 and 2005, the annual amount of radioactive material in the solid waste generated varied from 2500 to 5779 Curies (Reference 9). Based on experience from EPUs at other plants, the staff estimated that the amount of radioactive material in the solid waste would increase by 20 percent, proportional to the proposed EPU power increase. In 2000 and 2003, work was done that generated large amounts of used irradiated components, accounting for 98 percent and 92 percent, respectively, of the radioactive material generated in solid radwaste. Such work and the solid radwaste generated by that work occasionally occurs at SSES, but the range of 2500 to 5779 Curies is more typical (Reference 9). The annual average of radioactive material generated after the proposed EPU would still be bounded by the estimate of 5500 Curies in the 1981 FES for operation. In addition, the licensee must continue to meet all NRC and Department of Transportation regulations for transportation of solid radioactive waste. Therefore, the staff concludes that the impact from the increased amount of radioactive material in the solid radwaste due to the proposed EPU would not be significant.

The licensee estimates that the EPU would require replacement of 10 percent more fuel assemblies at each refueling. This increase in the amount of spent fuel being generated would require an increase in the number of dry fuel storage casks used to store spent fuel. The current dry fuel storage facility at SSES has been evaluated and can accommodate the increase (Reference 9). Therefore, the staff concludes that there would be no significant environmental impacts resulting from storage of the additional fuel assemblies.

In-Plant Radiation Doses

The proposed EPU would result in the production of more radioactive material and higher radiation dose rates in the restricted areas at SSES. SSES's radiation protection staff will continue monitoring dose rates and would make adjustments in shielding, access requirements, decontamination methods, and procedures as necessary to minimize the dose to workers. In addition, occupational dose to individual workers must be maintained within the limits of 10 CFR part 20 and as low as reasonably achievable (Reference 9).

The licensee has estimated that the work necessary to implement the proposed EPU at the plant would also increase the collective occupational radiation dose at the plant to approximately 230 person-rem per year until the implementation is completed in 2009. After the implementation is completed, the licensee estimates that the annual collective occupational dose would be in the range of 200 person-rem, roughly 12 percent higher than the current dose of 182 person-rem in 2005 and 184 person-rem in 2006 (Reference 9). Based on experience from EPUs at other plants, the staff concludes that these estimates are acceptable. The staff notes that SSES is allowed a maximum of 3,200 person-rem per year as provided in the 1981 Final Environmental Statement—Operating Stage. Therefore, the staff concludes that the increase in occupational exposure would not be significant.

Direct Radiation Doses Offsite

Offsite radiation dose consists of three components: Gaseous, liquid, and direct gamma radiation. As previously discussed under the Gaseous Radiological Waste and Liquid Radiological Waste sections, the estimated doses to a member of the public from radioactive gaseous and liquid effluents after the proposed EPU is implemented, would be well within the dose limits of 10 CFR part 20 and the design objectives of Appendix I to 10 CFR part 50.

The final component of offsite dose is from direct gamma radiation from radioactive waste stored temporarily onsite, including spent fuel in dry cask storage, and radionuclides (mainly nitrogen-16) in the steam from the reactor passing through the turbine system. The high energy radiation from nitrogen-16 is scattered or reflected by the air above the facility and represents an additional public radiation dose pathway known as ''skyshine.'' The licensee estimated that the offsite

radiation dose from skyshine would increase linearly with the increase in power level from the proposed EPU (20 percent); more nitrogen-16 is produced at the higher EPU power, and less of the nitrogen-16 decays before it reaches the turbine system because of the higher rate of steam flow due to the EPU. The licensee's radiological environmental monitoring program measures radiation dose at the site boundary and in the area around the facility with an array of thermoluminescent dosimeters. The licensee reported doses ranging from 0.2 to 1.3 mrem per year for the time period 2000–2005. The licensee estimated that the dose would increase approximately in proportion to the EPU power increase (20 percent) (Reference 9). Based on experience from EPUs at other plants, the staff concludes that this is an acceptable estimate. EPA regulation 40 CFR part 190 and NRC regulation 10 CFR part 20 limit the annual dose to any member of the public to 25 mrem to the whole body from the nuclear fuel cycle. The offsite dose from all sources, including radioactive gaseous and liquid effluents and direct radiation, would still be well within this limit after the proposed EPU is implemented. Therefore, the staff concludes that the increase in offsite radiation dose would not be significant.

Postulated Accident Doses

As a result of implementation of the proposed EPU, there would be an increase in the inventory of radionuclides in the reactor core; the core inventory of radionuclides would increase as power level increases. The concentration of radionuclides in the reactor coolant may also increase; however, this concentration is limited by the SSES Technical Specifications. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. Some of the radioactive waste streams and storage systems may also contain slightly higher quantities of radioactive material. The calculated doses from design basis postulated accidents for SSES are currently well below the criteria of 10 CFR 50.67; this was confirmed by the NRC staff in the Safety Evaluation Report supporting a license amendment for SSES dated January 31, 2007. The licensee has estimated that the radiological consequences of postulated accidents would increase approximately in proportion to the increase in power level from the proposed EPU (20 percent) (Reference 9). Based on experience from EPUs at other plants, the NRC staff concludes that this is an acceptable estimate. The calculated doses from design basis postulated accidents are based on conservative assumption and would still be well within the criteria of 10 CFR 50.67 after the increase due to the implementation of the proposed EPU.

The staff has reviewed the licensee's analyses and performed confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The staff's independent review of dose calculations under postulated accident conditions determined that dose would be within regulatory limits. Therefore, the staff concludes that the EPU would not significantly increase the consequences of accidents and would not result in a significant increase in the radiological environmental impact of SSES 1 and 2 from postulated accidents.

Fuel Cycle and Transportation Impacts:

Tables S–3 and S–4 in 10 CFR part 51 specify the environmental impacts due to the uranium fuel cycle and transportation of fuel and wastes, respectively. SSES's EPU would increase the power level to 3952 mega-watt thermal (Mwt), which is 3.3 percent above the reference power level for Table S–4. The increased power level of 3952 Mwt corresponds to 1300 mega-watt electric (Mwe), which is 30 percent above the reference power level for Table S–3. Part of the increase is due to a more efficient turbine design; this increase in efficiency does not affect the impacts of the fuel cycle and transportation of wastes. However, more fuel will be used in the reactor (more fuel assemblies will be replaced at each refueling outage), and that will potentially affect the impacts of the fuel cycle and transportation of wastes. The fuel enrichment and burn-up rate criteria of Tables S–3 and S–4 will still be met because fuel enrichment will be maintained no greater than 5 percent, and the fuel burn-up rate will be maintained within 60 giga-watt-days/metric ton uranium (Gwd/MTU). The staff concludes that after adjusting for the effects of the more efficient turbine, the potential increases in the impact due to the uranium fuel cycle and the transportation of fuel and wastes from the larger amount of fuel used would be small and would not be significant.

Summary

Based on staff review of licensee submissions and the 1981 FES for operation, it is concluded that the proposed EPU would not significantly increase the consequences of accidents, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the staff concludes that there would be no significant radiological environmental impacts associated with the proposed action. Table 3 summarizes the radiological environmental impacts of the proposed EPU at SSES.

TABLE 3.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Gaseous Radiological Effluents	Increased gaseous effluents (20 percent) would remain within NRC limits and dose design objectives.
Liquid Radiological Effluents	Increased liquid effluents (1 percent) would remain within NRC limits and dose design objectives.
Solid Radioactive Waste	Increased amount of solid radioactive waste generated (11 percent by volume and 20 percent by radioactivity) would remain bounded by evaluation in the FES.
Occupational Radiation Doses	Occupational dose would increase by approximately 20 percent. Doses would be maintained within NRC limits and as low as is reasonably achievable.
Offsite Radiation Doses	Radiation doses to members of the public would continue to be very small, well within NRC and EPA regulations.
Postulated Accident Doses	Calculated doses for postulated design basis accidents would remain within NRC limits.
Fuel Cycle and Transportation Impacts	Fuel enrichment and burn-up rate criteria of Tables S–3 and S–4 are met because fuel enrichment will be maintained no greater than 5 percent, and the fuel burn-up rate will be maintained within 60 Gwd/MTU. After adjusting for the effects of the more efficient turbine, the potential increases in impacts due to the fuel cycle and transportation of fuel and wastes would not be significant.

Alternatives to Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed EPU (i.e., the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the proposed EPU were not approved, other agencies and electric power organizations may be required to pursue alternative means of providing electric generation capacity to offset the increased power demand forecasted for the PJM regional transmission territory.

A reasonable alternative to the proposed EPU would be to purchase power from other generators in the PJM network. In 2003, generating capacity in PJM consisted primarily of fossil fuel-fired generators: coal generated 36.2 percent of PJM capacity, oil 14.3 percent, and natural gas 6.8 percent (Reference 10). This indicates that purchased power in the PJM territory would likely be generated by a fossil-fuel-fired facility. Construction (if new generation is needed) and operation of a fossil fuel plant would create impacts in air quality, land use, and waste management significantly greater than those identified for the proposed EPU at SSES. SSES's nuclear units do not emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that are commonly associated with fossil fuel plants. Conservation programs such as demand-side management could feasibly replace the proposed EPU's additional power output. However, forecasted future energy demand in the PJM territory may exceed conservation savings and still require additional generating capacity (Reference 9). The proposed EPU does not involve environmental impacts that are significantly different from those originally identified in the 1981 SSES FES for operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the original FES for construction.

Agencies and Persons Consulted

In accordance with its stated policy, on July 2, 2007, the staff consulted with the Pennsylvania State official, Brad Fuller, of the Pennsylvania Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the Environmental Assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated October 11, 2006, as supplemented by letters dated October 25, December 4 and 26, 2006, February 13, March 14 and 22, April 13, 17, 23, 26, and 27, May 3, 9, 14, and 21, June 1, 4, 8, 14, 20, and 27, July 6, 12, 13, 30, 31, and August 3, 13, 15, 28, and October 5, 2007 (ADAMS Accession Nos. ML062900160, ML062900161, ML062900162, ML062900306, ML062900361, ML062900401, ML062900405, ML063120119, ML063460354, ML070040376, ML070610371, ML070860229, ML070890411, ML071150113, ML071150043, ML071240196, ML071700104, ML071280506, ML071300266, ML071360026, ML071360036, ML071360041, ML071420064, ML071420047, ML071500058, ML071500300, ML071620218, ML071620311, ML071620299, ML071620342, ML071620256, ML071700096, ML071710442, ML071780629, ML071860142, ML071860421, ML071870449, ML071730404, ML072010019, ML072060040, ML072060588, ML072200103, ML07220477, ML072220482, ML072220485, ML072220490, ML072280247, ML072340597, ML072340603, ML072480182, and ML072900642 respectively). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of December 2007.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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[FR Doc. E7–24283 Filed 12–14–07; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–151]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for the University of Illinois Nuclear Research Laboratory Triga Research Reactor Champaign-Urbana in the City of Urbana, IL

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Thomas McLaughlin, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC., 20555. Telephone: (301) 415–5869; fax number: (301) 415–5369; e-mail: *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The Nuclear Regulatory Commission (NRC or Commission) proposes to issue a license amendment to Facility Operating License R–115 that would allow decommissioning of the University of Illinois' (University's or licensee's) Nuclear Research Laboratory (NRL) Advanced Teaching Research Isotope General Atomic (TRIGA) Mark II nuclear research reactor located on the campus of the University of Illinois at Champaign-Urbana in the city of Urbana, Illinois.

Environmental Assessment

Identification of the Proposed Action

By letters dated March 28, 2006 (See ADAMS ML060900623), and August 20, 2007 (See ADAMS ML072550089), the licensee submitted a Decommissioning Plan (DP) in accordance with 10 CFR 50.82(b)(1), in order to dismantle the TRIGA Reactor, to dispose of its component parts and radioactive material, and to decontaminate the facilities in accordance with the proposed DP to meet the Commission's unrestricted release criteria. After the Commission verifies that the release criteria have been met, Facility Operating License No. R–115 will be terminated. The licensee submitted an Environmental Report dated December 2005, that addresses the estimated environmental impacts resulting from decommissioning the TRIGA Reactor. The University of Illinois ceased operations of the NRL TRIGA reactor on August 6, 1998, and it was placed in a Safe Storage (SAFSTOR) condition. On August 18, 2004, the reactor fuel was removed and shipped to the U.S. Department of Energy's Idaho National Laboratory.

A ''Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the University of Illinois at Urbana-Champaign Nuclear Reactor Laboratory'' was published in the **Federal Register** on August 1, 2006 (71 FR 43528), and in the Champaign County, Illinois daily newspaper, *The News-Gazette,* on August 3, 2006. No comments were received.

Need for the Proposed Action

The proposed action is necessary because of the University of Illinois' decision to permanently cease operations at the NRL TRIGA Reactor. As specified in 10 CFR 50.82, any licensee may permanently cease operation and apply to the NRC for license termination and authorization to decommission the affected facility. Further, 10 CFR 51.53(d) provides that each applicant for a license amendment to authorize decommissioning of a production or utilization facility shall submit with its application an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. The University of Illinois is planning unrestricted use for the area that would be released.

Environmental Impact of the Proposed Action

The decommissioning plan states that all decontamination will be performed by trained personnel in accordance with the requirements of the radiation protection program, and will be overseen by a radiation safety officer with multiple years of experience in decommissioning health physics practices. All reactor and pool components will be removed from the facility as low-level radioactive waste and managed in accordance with NRC requirements. The licensee estimates the total occupational radiation exposure for the decommissioning process to be about 8.5 person-rem. The licensee proposes controls, as mentioned above and in the DP, to minimize the occupational exposure to individual workers, thereby ensuring that the exposures are within the 10 CFR Part 20 limits. In addition, by keeping the public at a safe distance, using access control, and by using the approved DP and Illinois's radiation protection program to control effluent releases, the licensee expects the radiation exposure to the general public to be negligible. The licensees' conclusion is consistent with the estimate given for the ''reference research reactor'' in NUREG–0586, ''Final Generic Environmental Impact Statement on Decommissioning of the Nuclear Facilities, August 1988.''

Occupational and public exposure may result from offsite disposal of the low-level residual radioactive material from the NRL, which includes the TRIGA Reactor. In the DP, the licensee stated that the handling, storage, and shipment of this radioactive material will meet the requirements of 10 CFR 20.2006, ''Transfer for Disposal and Manifest,'' and 49 CFR Parts 100–177, ''Transportation of Hazardous Materials.'' The waste that needs to be processed prior to disposal will be shipped by the licensee to a licensed waste processor. The DP states that waste for disposal will be shipped to an acceptable waste disposal site in accordance with applicable NRC and

Department of Transportation (DOT) regulations regarding waste packaging, labeling, and placarding. These shipments will be mixed waste containing activated and/or contaminated lead. It is expected that EnergySolutions of Clive, Utah, will receive the Class A waste. Based on the site characterization, Class B and C low-level radioactive waste are not expected at the NRL facility.

NRC regulations at 10 CFR 20.1402, provide radiological criteria for release of a site for unrestricted use. Release criteria for unrestricted use is a maximum Total Effective Dose Equivalent (TEDE) of 25 mrem per year from residual radioactivity above background and doses must be as low as reasonably achievable (ALARA). The results of the final status survey will be used to demonstrate that the predicted dose to a member of the public from any residual radioactivity does not exceed the 25 mrem per year dose limit. The NRC will perform inspections and if necessary a confirmatory survey to verify that the decommissioning activities and the final status survey results are acceptable.

The DP states that liquid waste that is generated during the decommissioning activities will be filtered and disposed of in accordance with the regulations in 10 CFR Part 20, Subpart K, ''Waste Disposal.'' Containment measures will be taken as necessary to minimize the spread of contamination. Engineered features such as enclosures and temporary barriers with high-efficiency particulate air filters will be used to control the spread of airborne radioactive material. Airborne releases of radioactive materials are not expected.

The licensee analyzed accidents applicable to decommissioning activities. The dose consequence from transportation accidents has the potential for a moderate dose of between 1 and 25 mrem for the public, which is within the dose limits for members of the public in 10 CFR Part 20, Subpart D, ''Radiation Dose Limits for Individual Members of the Public.''

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the NRL, which includes the TRIGA Reactor, the staff has determined that the proposed action will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released off site, and there will be no significant increase in occupational or public radiation exposure above those during the operation of the facility. Therefore, the staff concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. The predominant hazardous material in the NRL site is elemental lead and proper precautions will be taken to reduce the exposure to lead dust. Asbestos is also present in NRL construction materials (e.g. floor tiles, roofing materials) and will be removed by a licensed asbestos abatement contractor. Decommissioning activities will not affect non-radiological facility effluents and have no other environmental impact. The licensee states that there are no sensitive or endangered species on the NRL site and will ensure that all construction activities or any related disturbance will not result in the impairment of local waterways. Therefore, the staff concludes that there are no significant non-radiological environmental impacts associated with the proposed action. Accordingly, NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The three alternatives for disposition of the NRL, which includes the TRIGA Reactor are: Decontamination (DECON), SAFSTOR, and no action. The University of Illinois has proposed the DECON option. DECON is the alternative in which the equipment, structures, and portions of the facilities containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use.

SAFSTOR is the alternative in which the nuclear facilities are placed and maintained in a condition that allows the nuclear facilities to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. The no-action alternative would leave the facilities in their present configuration without any decommissioning activities required or implemented. The SAFSTOR and no-action alternatives would entail continued surveillance as well as physical security measures to be in place and continued monitoring by licensee personnel. The SAFSTOR and no-action alternatives would also require continued maintenance of the facilities. The radiological impacts of SAFSTOR and no-action would be less than the DECON option because of radioactive decay prior to the start of decommissioning activities. However, these options involve the continued use of resources during the SAFSTOR or no-action period. The University of Illinois has determined that the proposed action (DECON) is the most efficient use of NRL, including the TRIGA Reactor, since it proposes to use the space that will become available for unrestricted uses. These alternatives would have no significant environmental impact. In addition, the regulations in 10 CFR 50.82(b)(4)(i) allow an alternative which provides for delayed completion of decommissioning only when the delay is necessary to protect the public health and safety. The staff finds that delay is not justified since the environmental impacts of the proposed action and the alternatives are similar and insignificant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Report dated December 2005, for the University of Illinois NRL TRIGA Reactor.

Agencies and Persons Contacted

On September 18, 2007, the staff sent a copy of a draft Environmental Assessment (EA) to the Acting Bureau Chief, Bureau of Environmental Safety, Illinois Emergency Management Agency (IEMA), Division of Nuclear Safety, regarding the environmental impact of the proposed action.

This State official's comments were received on October 12, 2007, and incorporated into this EA.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of human health or the environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated March 28, 2006 (See ADAMS ML060900623), and August 20, 2007 (See ADAMS ML072550089), which are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852. The NRC maintains an Agency-wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic

Reading Room on the Internet at *http://www.nrc.gov.*

Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of December, 2007.

For the Nuclear Regulatory Commission.

Lydia W. Chang,

Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–24403 Filed 12–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on ESBWR Design Certification; Notice of Meeting

The ACRS Subcommittee on ESBWR Design Certification will hold a meeting on January 16–17, 2008, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss unclassified safeguards and proprietary information pursuant to 5 U.S.C. 552b (c)(3) and (4).

The agenda for the subject meeting shall be as follows:

Wednesday, January 16, 2008—8:30 a.m. until 5 p.m.

Thursday, January 17, 2008—8:30 a.m. until 5 p.m.

The Subcommittee will review and discuss the Safety Evaluation with Open Items for several chapters of the ESBWR Design Certification and make a recommendation to the full Committee. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GE-Hitachi Nuclear Energy Americas LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Charles G. Hammer (telephone 301/415–7363) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 10, 2007.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E7–24349 Filed 12–14–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of December 17, 24, 31, 2007; January 7, 14, 21, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 17, 2007—Tentative

There are no meetings scheduled for the Week of December 17, 2007.

Week of December 24, 2007—Tentative

There are no meetings scheduled for the Week of December 24, 2007.

Week of December 31, 2007—Tentative

There are no meetings scheduled for the Week of December 31, 2007.

Week of January 7, 2008—Tentative

There are no meetings scheduled for the Week of January 7, 2008.

Week of January 14, 2008—Tentative

There are no meetings scheduled for the Week of January 14, 2008.

Week of January 21, 2008—Tentative

There are no meetings scheduled for the Week of January 21, 2008.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

ADDITIONAL INFORMATION: By votes of 3–0 on December 11, 2007, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that (1) ''Affirmation of Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3, Licensing Board Order (Censure of Sherwood Martinelli) (Dec. 3, 2007)'' *and* (2) ''Discussion of Management Issues (Closed—Ex. 2)'' be held December 12, 2007, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html/.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 12, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–6076 Filed 12–13–07; 11:34 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

U.S. Nuclear Waste Technical Review Board Meeting; Las Vegas, NV

Board Meeting: January 16, 2008—Las Vegas, Nevada; The U.S. Nuclear Waste Technical Review Board will meet to discuss U.S. Department of Energy activities related to the possible development of a repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, to review U.S. Department of Energy (DOE) activities related to the proposed repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. Among the issues that will be discussed are transportation of the wastes, the potential tunnel environments after repository closure, and waste-package corrosion issues. The Board was charged in the Nuclear Waste Policy Amendments Act of 1987 with conducting an independent review of the technical and scientific validity of DOE activities related to the implementation of the Nuclear Waste Policy Act, including disposing of, packaging, and transporting spent nuclear fuel and high-level radioactive waste.

The meeting will be held in the Lake Mead/Red Rock/Mt. Charleston Ballroom on the 17th floor of the Marriott Suites Convention Center Hotel; 325 Convention Center Drive; Las Vegas, Nevada 89109; (tel) 702–650–2000; (fax) 702–650–9466.

A meeting agenda will be available on the Board's Web site (*http://www.nwtrb.gov*) approximately one week before the date of the workshop. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will be called to order by Board Chairman B. John Garrick at 8:00 a.m., followed by a program overview and an update of DOE transportation activities. Those presentations will be followed by discussions of DOE's thermal strategy for emplacing waste packages and plans for long-term corrosion testing. The discussions will resume after lunch with presentations on the effects of temperature on the composition of soluble salts in dust and on waste from degradation analysis.

Time will be set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff no later than January 30, 2008.

A block of rooms has been reserved for meeting attendees at the Marriott Suites Convention Center Hotel. When making a reservation, please state that you will be attending the Nuclear Waste Technical Review Board meeting. Reservations should be made by December 28, 2007, to ensure receiving the workshop rate. To make reservations call 800–228–9290 or access hotel reservations online at *http://marriott.com/LASST?groupCode=NWTNWTA=resvlink.*

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: December 12, 2007.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 07–6061 Filed 12–14–07; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 17, 2007:

An Open Meeting will be held on Tuesday, December 18, 2007, at 10 a.m., in Room L–002, the Auditorium, and a Closed Meeting will be held on Thursday, December 20, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session, and determined that no earlier notice of the Open Meeting was possible.

The subject matter of the Open Meeting scheduled for Tuesday, December 18, 2007 will be:

The Commission will consider whether to approve the 2008 budget of the Public Company Accounting Oversight Board and will consider the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

The subject matter of the Closed Meeting scheduled for Thursday, December 20, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims;

A matter related to an enforcement proceeding; and an

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 12, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24447 Filed 12–14–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56931; File No. SR–OCC–2007–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Yield-Based Treasury Securities

December 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 24, 2007, The Options Clearing Corporation (''OCC'') 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 prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78q–1(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would make minor technical changes to Sections 3 and 4 of Article XVI of OCC's By-Laws pertaining to yield-based Treasury options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. [4]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to make minor technical changes to Sections 3 and 4 of Article XVI of OCC's By-Laws, pertaining to yield-based Treasury options. In 2004, OCC amended Sections 3 and 4 of Article XVI to conform those sections to the corresponding By-Law provisions governing index options. [5] However, OCC delayed implementing these changes until they were disclosed in a supplement to the options disclosure document, Characteristics and Risks of Standardized Options. [6] Distribution of such a supplement recently began. In connection with preparing the supplement, OCC determined that minor technical changes to Sections 3 and 4 of Article XVI were warranted in order to more precisely conform these Sections to the disclosures made in the supplement. OCC also determined to correct an erroneous cross-reference to another By-Laws provision.

The proposed change is consistent with Section 17A of the Act because it more precisely conforms the terms of Sections 3 and 4 of Article XVI to disclosures made in a supplement to the options disclosure document, thereby increasing the protection of investors and promoting the prompt and accurate clearance and settlement of yield-based Treasury options. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(4) [8] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2007–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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–OCC–2007–07 and should be submitted on or before January 7, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority. [9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24308 Filed 12–14–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56937; File No. SR–CBOE–2007–127]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Cancellation Fees

December 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 50895 (December 20, 2004), 69 FR 78085 (December 29, 2004) (File No. SR–OCC–2004–11).

[6] Securities Exchange Act Release No. 55702 (May 3, 2007), 72 FR 26671 (May 10, 2007) (File No. SR–ODD–2007–02).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

[9] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2007, the Chicago Board Options Exchange, Incorporated (the ''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. On November 30, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The CBOE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice, as amended, 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 CBOE proposes to (i) reduce the book execution fee in classes trading on the ''Hybrid 3.0 Platform'', and (ii) amend its Order Routing System (''ORS'') order cancellation fee. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.org/legal.*

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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement the following fee changes on November 1, 2007.

Hybrid 3.0 Book Execution Fee

On June 7, 2007, the Commission approved the Exchange's ''Hybrid 3.0'' trading platform.[5] The remaining non-Hybrid classes trading on the Exchange have moved to the Hybrid 3.0 platform.[6] The new Hybrid 3.0 classes no longer utilize the services of an Exchange Order Book Official (''OBO'')[7]. Pursuant to Section 7 of the CBOE Fees Schedule, the Exchange assessed per contract fees on orders in non-Hybrid index option classes resting in the electronic book that were executed on the floor by the OBO (''OBO Execution Fees''). These OBO Execution Fees are $.25 per contract excluding market orders and certain limit orders entered prior to the opening rotation, and $.10 per contract for accommodation liquidations (cabinet trades).[8]

The Exchange proposes to reduce the $.25 per contract fee to $.18 per contract, rename the fee ''Hybrid 3.0 Book Execution Fee'', and eliminate the $.10 per contract fee for accommodation liquidations. The fee would apply to book executions in Hybrid 3.0 classes (currently, OEX, SPX and MVR). Specifically, orders in Hybrid 3.0 classes resting in the electronic book that are executed would be assessed a fee of $.18 per contract. This fee would not apply to orders in SPX options resting in the SPX electronic book that are executed during opening rotation on the final settlement date of CBOE Volatility Index (''VIX'') options and futures, as orders entered to participate in such opening rotation help to facilitate the calculation of a settlement price for VIX options and futures.[9]

The Hybrid 3.0 book execution system has helped to improve execution time as well as service and efficiency. The Hybrid 3.0 Book Execution Fee is designed to help the Exchange recover its costs of developing the system and offset the cost of maintaining and enhancing the system in the future.

ORS Order Cancellation Fee

CBOE currently assesses an executing clearing member $1.50 for each cancelled public customer ORS order in excess of the number of public customer orders that the executing clearing member executes in a month for itself or for a correspondent firm. The purpose of the fee is to ease order backlogs on ORS and related systems. The fee is not charged if less than 500 public customer orders are cancelled in a month by the executing clearing member for itself or for a correspondent firm. The Exchange aggregates and counts as one executed order for purposes of the fee all public customer options orders from the same executing clearing member for itself or for a correspondent firm that are executed in the same series on the same side of the market at the same price within a 30 second period. The following ORS order activity is exempt from the fee: (i) Cancelled ORS orders that improve the Exchange's prevailing bid-offer (BBO) market when received; and (ii) fill and cancellation activity occurring within the first one minute of trading following the opening of each option class.

The Exchange proposes to amend the fee by additionally exempting the following activity: (i) Complex order[10] fills and cancels; (ii) unfilled Fill-or-Kill (''FOK'') orders[11], and (iii) unfilled Immediate-or-Cancel (''IOC'') orders.[12] Because this activity does not contribute excessively to system congestion the Exchange believes it is appropriate to exclude this activity from the calculation of the fee.

Additionally, the Exchange proposes to exempt from the fee fill and cancellation activity in Mini-SPX Index Options (XSP). CBOE intends to undertake a marketing re-launch of the XSP product due in part to the inclusion of XSP options in the expanded penny pilot program recently approved by the Commission.[13] In conjunction with the marketing re-launch, CBOE has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55874 (June 7, 2007), 72 FR 32688 (June 13, 2007).

[6] The classes that trade on the Hybrid 3.0 platform are options on the S&P 100 Index (''OEX''), options on the S&P 500 Index (''SPX'') and options on the Morgan Stanley Retail Index (''MVR'').

[7] An ''Order Book Official'' is defined in CBOE Rule 7.1 as an Exchange employee designated pursuant to CBOE Rule 7.3 who is responsible for (i) maintaining the book with respect to the classes of options assigned to him; (ii) effecting proper executions of orders placed with him; (iii) displaying bids and offers pursuant to CBOE Rule 7.7 of these Rules; and (iv) monitoring the market for the classes of options assigned to him.

[8] An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is conducted in accordance with CBOE Rule 6.54.

[9] The opening rotation procedures in options series used to calculate the final settlement price of volatility indexes are described in CBOE Rule 6.2B.01.

[10] ''Complex Order'' is defined in CBOE Rule 6.53C(a).

[11] ''Fill-or-Kill'' order is defined in CBOE Rule 6.53(j) as an order which is to be executed in its entirety as soon as it is represented in the trading crowd, and such order, if not so executed, is to be treated as cancelled.

[12] ''Immediate-or-Cancel'' order is defined in CBOE Rule 6.53(k) as a market or limit order which is to be executed in whole or in part as soon as such order is represented in the trading crowd. Any portion not so executed is to be treated as cancelled.

[13] *See* Securities and Exchange Act Release No. 56565 (September 27, 2007), 72 FR 56403 (October 3, 2007).

determined to exclude activity in XSP options from the calculation of the fee.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [14], in general, and furthers the objectives of Section 6(b)(4) [15] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(2) [17] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–127 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–CBOE–2007–127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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–CBOE–2007–127 and should be submitted on or before January 7, 2008.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24310 Filed 12–14–07; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 19b–4(f)(2).

[18] For purposes of calculating the 60-day abrogation period, the Commission considers the abrogation period to have commenced on November 30, 2007.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56936; File No. SR–FINRA–2007–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to FINRA's NYSE Rule 342.13 and the General Securities Principal Examination

December 10, 2007.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA's New York Stock Exchange LLC (''NYSE'') Rule 342.13 (Acceptability of Supervisors) [3] to eliminate the requirement that the General Securities Principal Examination (''Series 24 Examination'') be passed after July 1, 2001 in order to be recognized by NYSE as an acceptable alternative to the General Securities Sales Supervisor Qualification Examination (''Series 9/10 Examination'') for persons whose duties do not include supervision of options or municipal securities sales activities. The proposed rule change is identical to a rule change by the NYSE to its version

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA has incorporated certain NYSE rules into its rulebook, including NYSE Rule 342. This incorporated NYSE rule applies solely to those members of FINRA that also are members of NYSE on or after July 30, 2007 (''Dual Members''), and until the time FINRA adopts a consolidated rulebook applicable to all of its members. The incorporated NYSE rules apply to the same categories of persons to which they applied as of July 30, 2007. In applying the incorporated NYSE rules to Dual Members, FINRA also has incorporated the related interpretive positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

of Rule 342.13, which was recently approved by the Commission.[4]

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and on FINRA's Web site at *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. FINRA 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing a rule change to FINRA's NYSE Rule 342.13 that would eliminate the requirement that the Series 24 Examination be passed after July 1, 2001, in order to be recognized by the NYSE as an acceptable alternative to the Series 9/10 Examination requirement for persons whose duties do not include supervision of options or municipal securities sales activities.[5] The proposed rule change is identical to a proposed rule change by NYSE to its version of Rule 342.13,[6] which was recently approved.[7]

NYSE Rule 342 (Offices—Approval, Supervision and Control) prescribes the general supervisory requirements for NYSE member organizations. Among these requirements, Rule 342.13 (Acceptability of Supervisors) prescribes the NYSE's qualification standards for personnel delegated supervisory responsibility. Before 2001, this provision provided, in part, that a person delegated supervisory responsibility must pass the Series 9/10 Examination or an historical equivalent (*i.e.*, the Series 8 Examination).

In October 2002, NYSE amended Rule 342.13[8] to recognize FINRA's Series 24 Examination, if taken and passed after July 1, 2001, as an acceptable alternative to the Series 9/10 Examination requirement for persons whose duties do not include supervision of options or municipal securities sales activities. NYSE reasoned that, as of July 2, 2001, FINRA had enhanced the Series 24 Examination to include questions that provide appropriate coverage of NYSE Rules. As noted above, NYSE recently eliminated the requirement in Rule 342.13 that the Series 24 Examination be taken and passed after July 1, 2001. FINRA is proposing an identical change to its version of Rule 342.13.

Further rationale for the proposed rule change is set forth in NYSE's filing.[9] As noted in that filing, the NYSE and NASD rulebooks have converged significantly in the last six years, and individuals who took the Series 24 Examination before July 1, 2001 have been subject to regulatory standards that have, to a large degree, been harmonized.[10] In addition, these individuals have been subject to regulatory and firm element continuing education, which provides ongoing training with respect to current regulatory requirements, including NYSE and NASD Rules, applicable to these persons' duties and responsibilities.

FINRA seeks accelerated approval of the proposed rule change and requests that the effective date of its proposed rule change be the same date as approval of the proposed rule change for the identical NYSE rule.[11]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would reduce unnecessary regulatory burdens and provide greater harmonization between the NYSE and FINRA qualification and examination requirements by eliminating the requirement that the Series 24 Examination be taken and passed after July 1, 2001 in order to be recognized by the NYSE as an acceptable alternative to the Series 9/10 Examination for persons whose duties do not include supervision of options or municipal sales activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[4] *See* Securities Exchange Act Release No. 56854 (November 28, 2007), 72 FR 68613 (December 5, 2007) (SR–NYSE–2007–53) (order approving an amendment to NYSE Rule 342.13 (Acceptability of Supervisors)).

[5] The Series 24 Examination does not address these activities. Prospectively, persons may continue to qualify to supervise options or municipal securities sales activity by taking and passing the Series 24 Examination and also taking and passing the Registered Options Principal (''Series 4'') and/or Municipal Securities Principal (''Series 53'') Examinations.

[6] Pursuant to Rule 17d–2 under the Act, 17 CFR 240.17d–2, NASD, NYSE, and NYSE Regulation, Inc. entered into an agreement (''Agreement'') to reduce regulatory duplication for firms that are Dual Members by allocating certain regulatory responsibilities for selected NYSE rules from NYSE Regulation, Inc. to FINRA. The Agreement includes a list of all of those rules (''Common Rules'') for which FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent that such responsibilities involve member firm regulation. *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (approving a plan for allocating regulatory responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving incorporation of certain NYSE Rules relating to member firm conduct). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[7] *See supra*, note 4.

[8] *See* Securities Exchange Act Release No. 46631 (October 9, 2002), 67 FR 64187 (October 17, 2002) (order approving SR–NYSE–2002–24). *See also* NYSE Information Memo 02–51 (November 12, 2002).

[9] *See* Securities Exchange Act Release No. 56686 (October 23, 2007), 72 FR 61193 (October 29, 2007) (SR–NYSE–2007–53) (notice of proposed rule change, as modified by amendments no. 1 and 2, to amend NYSE Rule 342.13 (Acceptability of Supervisors)).

[10] *Id.*

[11] The Commission notes that the comparable amendment to NYSE Rule 342.13 was approved on November 28, 2007. *See supra*, note 4. Thus, the Commission considers FINRA to be requesting a retroactive effective date of November 28, 2007, for this proposed rule change.

[12] 15 U.S.C. 78*o*–3(b)(6).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2007–022 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–FINRA–2007–022. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2007–022 and should be submitted on or before January 7, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change would make FINRA's NYSE Rule 342.13 identical to the version of NYSE Rule 342.13 in the NYSE rulebook that was recently approved by the Commission.[15] In addition, the Commission believes that the proposed rule change comports with the provisions of the 17d–2 Agreement, as approved by the Commission, in which FINRA and NYSE agreed to promptly propose conforming changes, absent a disagreement about the substance of a proposed rule change to one of the Common Rules, to ensure that such rules continue to be Common Rules under the Agreement. In this regard, the Commission believes it is appropriate for the proposed rule to be effective retroactively as of November 28, 2007, which is the date NYSE's amendment to NYSE Rule 342.13 was approved by the Commission.[16]

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,[17] for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. This approval allows the proposed rule change to take effect without delay. NYSE's proposed revision to NYSE Rule 342.13 was published for comment and approved by the Commission.[18] Interested persons were provided the opportunity to submit comments on rule text that is identical to FINRA's proposal, and no comments were received. The Commission believes FINRA's proposal raises no new regulatory or substantive issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2007–022), be, and it hereby is, approved on an accelerated basis effective November 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24309 Filed 12–14–07; 8:45 am]

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[13] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] *See supra*, note 4.

[16] *Id.*

[17] 15 U.S.C. 78s(b)(2).

[18] *Id.*

[19] *Id.*

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56930; File No. SR–OCC–2006–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Choice of Law and Forum Selection

December 7, 2007.

I. Introduction

On May 22, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2006–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 27, 2007.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will add new general choice of law and forum selection provisions to OCC's By-Laws. The purpose of the proposed rule change is to ensure there are appropriate choice of law and forum selection provisions governing all contractual relations between OCC and each of its clearing members. The proposed provisions should provide greater clarity, consistency, and predictability in the application of the law to all contractual relations between OCC and each of its clearing members and in the choice of forum in the event of litigation on such matters.

OCC's By-Laws and Rules each currently contain choice of law provisions that apply in somewhat limited circumstances. This approach is problematic as it could lead to inconsistencies between the two provisions or because it may fail to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 55653,

properly specify a governing law with respect to certain contractual relations altogether.

Article VI, Section 9(c) of OCC's By-Laws provides that Illinois law, specifically the Illinois Uniform Commercial Code, is the governing law with respect to cleared contracts. A ''cleared contract'' is defined in Article I, Section 1 of OCC's By-Laws as ''a cleared security or commodity future or futures option that is cleared by [OCC].'' A ''cleared security'' is defined as ''an option contract (other than a futures option), a security future or a BOUND.'' However, OCC has interactions and relationships with clearing members not directly involving cleared contracts (*e.g.*, membership and financial requirements). Accordingly, the choice of law provisions in Article VI, Section 9(c) are not comprehensive.

OCC Rule 614(m), which clarifies the limited obligations of OCC in connection with pledges of cleared securities, incorporates certain provisions of Article VI, Section 9 of the By-Laws by reference and also contains special provisions applicable in the event that, notwithstanding the choice of law provisions of Article VI, Section 9(c), the laws of a jurisdiction that has not adopted the 1994 revisions to Article 8 and 9 of the UCC are applicable to security interests in pledged securities. However, because all 50 U.S. States, the District of Colombia, the U.S. Virgin Islands, and Puerto Rico have now adopted the 1994 revisions to Article 8 and 9 of the UCC, the special provisions are unnecessary.

Article V (Clearing Members), Section 3 (Conditions to Admission), paragraph (k) of OCC's By-Laws provides that as a condition to admission as a clearing member non-U.S. securities firms must consent to the jurisdiction of Illinois courts and to the application of U.S. law in connection with any dispute with OCC arising from membership. However, this provision only applies to the limited context of disputes with OCC arising from membership.

The proposed rule change adds a general choice of law provision to OCC's By-Laws in order to provide consistency and predictability in the application of the law to all relations between OCC and its clearing members. This new provision will be particularly useful with respect to collateral posted by non-U.S. clearing members where a clear choice of law provision could provide further assurance that OCC's interests in such collateral are properly perfected. Such a provision will also decrease the likelihood of an inadvertent inconsistency among provisions of the various Articles of the By-Laws.

Illinois law is the most logical choice to be the governing law under the proposed choice of law provision given OCC's location and OCC's familiarity with Illinois law. Selecting Illinois law, along with federal law, as the governing law will also result in greatest consistency with current provisions of OCC's By-Laws and Rules. In addition, selection of Illinois as the forum for resolving any claims or disputes arising out of or relating to OCC's By-Laws or Rules will be most logical in light of the consistent application of Illinois law to relations between OCC and its clearing members.

The following revisions to OCC's By-Laws and Rules are necessary to create a general choice of law provision:

(1) *New Choice of Law Provision:* OCC will add a new Section 10 (General Choice of Law and Forum Selection) to Article IX (General Provisions) of its By-Laws. New Section 10 will specify Illinois law as the governing law with respect to OCC's By-Laws and Rules as well as any agreements between OCC and clearing members. It will also specify that any lawsuits between clearing members and OCC be brought in a federal court or in the absence of federal jurisdiction in a state court located in Chicago, Illinois. Existing Sections 10–12 of Article IX will be renumbered as Sections 11–13 but will otherwise remain unchanged.

(2) *Amendments to Other Sections of the By-Laws:* OCC will remove Article VI, Section 9(c) of the By-Laws in its entirety and replace it with a reference to Article IX, Section 10 of the By-Laws and with a notice provision that persons desiring to perfect security interests in cleared securities should seek the advice of counsel.

(3) *Amendments to Rules:* OCC will make conforming amendments to Rule 604(b)(3)(ii) and to Interpretation and Policy .01 under Rule 614. These amendments are necessary in light of the adoption of the general choice of law provision described above. OCC will also delete language in Rule 614(m) providing for a contingency in the event of the application of the law of a jurisdiction that has not adopted the 1994 amendments to Articles 8 and 9 of the UCC as these are no longer necessary.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. [3] The proposed rule change is designed to eliminate any uncertainty about the law applicable to contractual disputes between OCC and its members and about the forum for any litigation between OCC and its members. Uncertainty about these matters could prolong contractual disputes or litigation, which ultimately could affect or interfere with OCC's ability to clear and settle securities transactions for one or more of its members. Additionally, the proposed rule change is designed to assure that OCC's interests in members' collateral is perfected because the rule change clarifies that Illinois law applies to the securities on deposit at OCC by its foreign members. In the event of a member default, OCC uses such collateral either in the form of margin or clearing fund to meet its settlement obligations and to protect itself and its other members from financial loss. Accordingly, because the proposed rule change adds a new choice of law and forum selection provision to OCC's rules, the Commission finds that it is designed to assure the safeguarding of securities and funds which are in OCC's custody or control of for which it is responsible under Section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. [4]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–09) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority. [5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24307 Filed 12–14–07; 8:45 am]

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[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Alterations to Existing System of Records, Including New Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Altered System of Records and New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to alter an existing system of records entitled, the *Visitor Intake Process/Customer Service Record (VIP/CSR) System, 60–0350.* The proposed alterations will result in the following changes to the *VIP/CSR System:*

(1) Expansion of the categories of individuals covered by the *VIP/CSR System*;

(2) Expansion of the categories of records maintained in the *VIP/CSR System*;

(3) Expansion of the purposes for which we use the *VIP/CSR System*; and

(4) Amendment of the record source categories covered by the *VIP/CSR System*.

We are also establishing a new routine use for disclosure of information maintained in the *VIP/CSR System*.

The proposed alterations and new routine use are discussed in the **SUPPLEMENTARY INFORMATION** section below. We invite public comment on this proposal.

DATES: We filed a report of the proposed alterations and new routine use disclosure with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on November 13, 2007. The proposed altered system of records, including the proposed new routine use applicable to the system, will become effective on December 23, 2007, unless we receive comments warranting them not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Contact Earlene Whitworth Hill, Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone at (410) 965–1817, e-mail: *earlene.whitworth.hill@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alterations to the VIP/CSR System of Records

A. General Background

Social Security provides a variety of services to the general public in connection with various programs under the Social Security Act. This activity requires personal interaction between our employees and the public on many occasions. We originally published a notice of the *VIP/CSR System* in the **Federal Register** (FR) at 67 FR 63489 on October 11, 2002. At that time, we used information in the *VIP/CSR System* for management information and administrative purposes, such as tracking scheduled appointments and monitoring visitor information in our field offices, and for programmatic purposes associated with individuals' claims for benefits under programs we administer. On October 13, 2005, we published a notice of alterations and a new routine use applicable to the *VIP/CSR System* at 70 FR 59794. The alterations to the *VIP/CSR System* allowed us to maintain information that would alert employees in our offices if a member of the public takes action, or threatens to take action, that affects the security and safety of our employees, security guards, visitors, facilities, or records. We are now making additional alterations to the *VIP/CSR System* as discussed below.

B. Proposed Alterations

SSA believes that a threat exists to the safety and security of SSA employees, security personnel, visitors, and facilities when a beneficiary, claimant, attorney or non-attorney representative, or representative payee commits, or attempts to commit, a violent crime for which a court has issued an arrest warrant and the individual is not in the custody of a law enforcement agency, and we reasonably believe that the individual will contact SSA for a business-related purpose. We consider this to be the case even when an individual has not threatened or committed an act of violence directly against one of our employees, visitors, or facilities. For example, we could have a situation in which a beneficiary commits or attempts to commit a violent crime against his Social Security representative payee and an arrest warrant is issued for the beneficiary. As a result, it is likely that the beneficiary will contact or visit an SSA office somewhere in the United States in order to designate a new representative payee. If the defendant flees in order to avoid apprehension, he or she may contact or visit SSA in order to conduct other business matters such as a change of address, change method of payment to direct payment, change in direct deposit, payment of an underpayment, payment of benefit check, or to act on a scheduled appointment. Such contact could pose a threat to anyone present in the office, as well as the facility itself.

To assist us in protecting the safety and security of our employees, visitors, and facilities, we have developed a *VIP/CSR System* High Risk Alert functionality that will alert our offices about these potentially dangerous situations. We will maintain information about individuals only when:

- A court has issued an arrest warrant for the individual who is charged with committing, or attempting to commit, a violent crime and he or she is not in the custody of law enforcement authorities; and
- SSA management officials have a reasonable expectation that the individual will visit or contact us for a business matter (e.g., request a change of address, change of representative payee, direct payment of benefits, change in direct deposit, payment of an underpayment, payment of a benefit check, or the individual has a scheduled appointment); and
- SSA management officials have verified the identity of the individual who is under investigation with law enforcement and have determined that this individual is the same individual with whom we may have contact.

Since we want to ensure that information is entered into the *VIP/CSR System* only as we describe above, before we enter information into the system, the appropriate Social Security field office (FO) manager, Area Director, and Assistant Regional Commissioner, Management and Operations Support, will be required to review the facts to determine if the case meets the criteria listed above. Once our management concludes that all factors are present, the case will be entered in the *VIP/CSR System* as a High Risk Alert.

Once information is entered in the *VIP/CSR System*, at a minimum, the FO manager will confirm, every 30 days with the appropriate law enforcement officials who have jurisdiction over the case, that the individual identified still presents a danger to SSA employees, visitors, or facilities. If it is determined that the individual no longer presents a danger, the High Risk Alert will be deleted. Situations that would meet the criteria for deletion are:

- The individual is in the custody of law enforcement; or

• The individual is no longer a suspect or has been exonerated; or

• The individual is deceased.

The SSA Regional Center for Security and Integrity and the Division of Systems Security and Program Integrity will maintain a list of all High Risk Alert cases that have been entered into *VIP/CSR System* and will monitor the list to ensure that we are regularly reviewing cases.

We will issue operating instructions for our management officials' use to ensure that the changes to the *VIP/CSR System* are implemented as we describe above.

Before we can implement the changes discussed above, we must make the following alterations to the *VIP/CSR System*:

i. Amend the categories of individuals section of the notice of the *VIP/CSR System* to include our beneficiaries, claimants, attorney or non-attorney representatives, or representative payees who commit, or attempt to commit, a violent crime, have an outstanding arrest warrant, and who we reasonably believe will attempt to contact one of our facilities to conduct program business;

ii. Amend the categories of records section of the notice of the *VIP/CSR System* to include a High Risk Alert indicator and identifying information about the individuals described in item B.i above, such as their name and/or Social Security number (SSN), date of birth, information pertaining to the specific nature of the crime, and information pertaining to the date, time, and the location of the crime;

iii. Amend the purpose(s) section of the notice of the *VIP/CSR System* to describe that we will use information in the *VIP/CSR System* for the purposes described in items B.i and B.ii above; and

iv. Amend the record source categories section of the notice of the *VIP/CSR System* to identify law enforcement officials as the source of the warrant information that will be maintained in the *VIP/CSR System*.

II. New Routine Use

A. Discussion

As described above, we will maintain information in the *VIP/CSR System* about the new category of individuals (i.e., claimants, beneficiaries, attorney or non-attorney representatives, or representative payees) who commits, or attempts to commit, a violent crime, have an outstanding arrest warrant, and who we reasonably believe will attempt to contact one of our facilities to conduct program business, only as long as the individual poses a threat to the security and safety of our employees, visitors to our offices, and our facilities. As discussed above, at a minimum, the FO manager will confirm every 30 days with the law enforcement officials who have jurisdiction over the cases that the individual identified still presents a danger to our employees, visitors, or facilities. This confirmation will require us to disclose some basic information about the individual for whom the warrant was issued. To comply with the Privacy Act, we are establishing the following routine use, which appears as routine use number 8 in the notice of the *VIP/CSR System* below. The routine use provides for disclosure:

To the appropriate law enforcement official, the Social Security Administration (SSA) may disclose information regarding a Social Security beneficiary, claimant, attorney or non-attorney representative, or representative payee who is the subject of an outstanding arrest warrant for having committed, or having attempted to commit, a violent crime for the purposes of determining whether SSA should include an individual's information in the VIP/CSR System or remove an individual's information from the system because he/she no longer meets the criteria (i.e., the individual is in the custody of law enforcement, is no longer a suspect or has been exonerated, or is deceased).

B. Compatibility of Routine Use

The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SSA's disclosure regulation (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulation permits us to disclose information under a routine use, where necessary, to carry out SSA programs. The routine use we are proposing will allow disclosures that assist in ensuring that our places of business are safe and secure for both customers and employees, and that our employees can perform their duties without fear of intimidation or injury. Thus, the routine use is appropriate and meets the relevant statutory and regulatory criteria.

III. Housekeeping Change

We are making the following housekeeping changes to the *VIP/CSR System* notice to make it accurate and up-to-date.

1. Categories of records in the system: We are revising the wording of item 7 in this section so that it clearly identifies to whom the records pertain.

2. Routine uses of records maintained in the system, including categories of users and the purposes of such uses: We have revised the wording of routine use number 6. We have not made any substantive changes to the routine use.

3. Safeguards: We are deleting the text ''or alternate participants,'' which was inadvertently included in this section of the notice.

4. Retention and disposal: We have revised the retention dates so that they adhere to the General Records Schedule issued by National Archives and Records Administration (NARA).

IV. Effect of the Proposed *VIP/CSR System* Alterations and Routine Use on the Rights of Individuals

The proposed alterations and routine use applicable to the *VIP/CSR System* will assist us in carrying out our responsibility to protect the safety and security of our employees, visitors to Social Security offices, and SSA facilities. We will collect, maintain, use, and disclose only the minimum information necessary to accomplish this purpose. Further, we will adhere to all applicable statutory requirements when doing so, including those under the Social Security Act and Privacy Act. Thus, we do not anticipate that the alterations and routine use will have an unwarranted effect on the rights of individuals.

Dated: November 13, 2007.

Michael J. Astrue,

Commissioner.

SYSTEM NUMBER:

60–0350.

SYSTEM NAME:

Visitor Intake Process/Customer Service Record (VIP/CSR) System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers visitors to the Social Security Administration (SSA) field offices (FO) for various purposes (see ''Purpose(s)'' section below); individuals who have threatened an act of violence, commit, or attempt to commit, a violent crime against an SSA employee, a visitor to any SSA office conducting business or another individual accompanying such visitor, or to any SSA office; and SSA beneficiaries, claimants, attorney or non-attorney representatives, or representative payees who commit, or

attempt to commit, a violent crime, have an outstanding arrest warrant, and who we reasonably believe will attempt to contact one of our facilities to conduct program business.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each visitor:

(1) Visitor information, such as Social Security number, full name and date of birth, when such information is provided by the visitor;

(2) Visitor information, such as the time the visitor entered and left the office, an assigned group number, number of interviews associated with the visit and remarks associated with the visit;

(3) Appointment information, such as date and time of appointment, source of appointment and appointment unit number (unit establishing appointment);

(4) Notice information, such as close-out notice type (e.g., title II 6-month closeout letter, title XVI SSA–L991) and close-out notice date/time when sent;

(5) Interview information, such as each occurrence, subject of interview, estimated waiting time, preferred language, type of translator, the number of the interview in the queue, interview disposition (e.g., completed, deleted, left without service), interview priority, start and ending time and name of interviewer;

(6) SSN, full name and relationship to claimant or beneficiary, when such information is provided;

(7) ''High Risk'' alert information about individuals who take action, or threaten to take action, that affects the security and safety of our employees, security guards, visitors, facilities, or records; i.e., personal information about the visitor such as name, SSN, date of birth, specific nature of the threat or act of violence, the date, time, and location of the threat or act of violence;

(8) Source of the report from the SSA–3114–U4; and

(9) ''High Risk'' alert information about beneficiaries, claimants, attorney or non-attorney representatives, or representative payees who commit, or attempt to commit, a violent crime, have an outstanding arrest warrant, and who we reasonably believe will attempt to contact one of our facilities to conduct program business; i.e., personal information about the individuals such as name, SSN, date of birth, information pertaining to the specific nature of the crime, and the date, time, and location of the crime.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE(S):

Information in *VIP/CSR System* is used to:

- Provide a means of collecting waiting time data on all in-office interviews in SSA FOs;
- Provide management information on other aspects of all in-office interviews in SSA FOs;
- Provide a source for customer service record data collection for such interviews and capture discrete data about the volume and nature of inquiries to support management decisions in the areas of process improvement and resource allocation;
- Provide a means of collecting information about individuals who have threatened an act of violence and/or have committed an act of violence against an SSA employee, or a visitor to any SSA office conducting business, and/or to any SSA office;
- Generate a timely ''High Risk'' alert to alert intake employees of an individual who may pose a security risk, including a ''High Risk'' alert for Social Security beneficiaries, claimants, attorney or non-attorney representatives, or representative payees who commit, or attempt to commit, a violent crime, have an outstanding arrest warrant, and who we reasonably believe will attempt to contact one of our facilities to conduct program business;
- Provide a standard approach to ensure the safety of SSA employees, visitors, security personnel, and facilities.

The information collected from visitors to SSA FOs will be used for filing claims for benefits under title II, transacting post-entitlement actions if currently entitled to benefits under title II, filing claims for benefits under title XVI, transacting post-eligibility actions if currently eligible for benefits under title XVI, obtaining an SSN, transacting other actions related to a SSN, or other actions or queries that may require an interview at SSA.

The information collected from the ''High Risk'' alert will be used to advise the intake employees at any SSA office of the potential security risk and to use extra caution when dealing with the individual who is before them and/or who has scheduled an appointment. The ''High Risk'' alert will include personal information about the visitor such as name, SSN, date of birth, specific nature of the threat or act of violence, and the date, time, and location of the threat or act of violence.

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

Disclosures may be made for routine uses as indicated below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) The Social Security Administration (SSA), or any component thereof, or

(b) Any SSA employee in his or her official capacity; or

(c) Any SSA employee in his or her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States, or any agency thereof, where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To contractors and other Federal agencies, as necessary, to assist the Social Security Administration in the efficient administration of its programs.

5. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Social Security Administration, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned Agency functions.

6. To the General Services Administration and National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, information that is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

7. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of Social Security Administration (SSA) employees and customers, the

security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

8. To the appropriate law enforcement official, the Social Security Administration (SSA) may disclose information regarding a Social Security beneficiary, claimant, attorney or non-attorney representative, or representative payee who is the subject of an outstanding arrest warrant for having committed, or having attempted to commit, a violent crime for the purposes of determining whether SSA should include an individual's information in the *VIP/CSR System* or remove an individual's information from the system because he or she no longer meets the criteria (i.e., the individual is in the custody of law enforcement, is no longer a suspect or has been exonerated, or is deceased).

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

STORAGE:

Records in this system are maintained in both electronic and paper form (e.g., magnetic tape and disc and microfilm).

RETRIEVABILITY:

Records in this system will be retrieved by the individual's SSN and/or name.

SAFEGUARDS:

Security measures include the use of access codes to enter in the computer system, which will maintain the data and storage of the computerized records in secured areas that are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. See 5 U.S.C. 552a(i)(1).

Contractor personnel and/or alternate participants having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Records in the *Visitor Intake Process/Customer Service Record (VIP/CSR) System* ''High Risk'' file will be retained for five years in accordance with Section E of NC–47–76–12. The means of disposal of the information in the *Visitor Intake Process/Customer Service Record (VIP/CSR) System* ''High Risk'' file will be appropriate to the storage medium (e.g., deletion of individual electronic records or shredding of paper records). Additionally, management officials will have the ability to delete records from the ''High Risk'' file electronic database.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Commissioner, Office of Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him or her by writing to the system manager(s) at the above address and providing his or her name, SSN, or other information that may be in the system of records that will identify him or her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his or her identity, the individual must certify in writing that he or she is the person claimed to be and that he or she understands that knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his or her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his or her name, SSN, address, date of birth and place of birth, along with one other piece of information such as mother's maiden name), and ask for his or her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his or her identity or must certify in the request that he or she is the person claimed to be and that he or she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as Notification procedure(s). Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

CONTESTING RECORD PROCEDURE(S):

Same as Notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from information collected from individuals interviewed in person in SSA FOs, from existing systems of records, such as the Claims Folders System, 60–0089; Master Beneficiary Record, 60–0090, Supplemental Security Income Record and Special Veterans Benefits, 60–0103; from information generated by SSA, such as computer date/time stamps at various points in the interview process; and from law enforcement.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. E7–24391 Filed 12–14–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Marana Regional Airport, Marana, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Town of Marana, Arizona for Marana Regional Airport under the provisions of 49 U.S.C. 47501, *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is December 7, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Simmons, Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Hawthorne, California 90261, Telephone: 310/725–3614.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Marana Regional Airport are in compliance with applicable requirements of Part 150, effective December 7, 2007. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Town of Marana, Arizona. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: ''Exhibit 1–2005 Noise Exposure Map,'' and ''Exhibit 2–2010 Noise Exposure Map.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Yearly Day-Night Average Sound Level (DNL) 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2005 are shown in Table 4B. Estimates of the future residential population within the 2010 noise contours are shown in Table 4E. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Exhibits 3D, 3E, and 3F. The type and frequency of aircraft operations (including nighttime operations) are found in Table 3C. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on December 7, 2007.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, Room 3024, 15000 Aviation Boulevard, Hawthorne, California 90261.

Charles Mangum, Airport Director, Marana Regional Airport, 11700 W. Avra Valley Road, #91, Marana, Arizona 85633–9625.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on December 7, 2007.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 07–6067 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No: FAA–2008–22842]

Notice of Opportunity To Participate, Criteria Requirements and Application Procedure for Participation in the Military Airport Program (MAP)

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

ACTION: Notice of criteria and application procedures for designation or redesignation, for the fiscal year 2008 MAP.

SUMMARY: In anticipation of congress enacting an extension of the Airport Improvement Program (AIP) the FAA is publishing this annual notice. This notice announces the criteria, application procedures, and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for up to 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the MAP. While FAA currently has continuing authority to designate or redesignate airports, FAA does not have authority to issue grants for fiscal year 2008 MAP, and will not have authority until Congress enacts legislation enabling FAA to issue grants.

The MAP allows the Secretary to designate current (joint-use) or former military airports to receive grants from

the Airport Improvement Program (AIP). The Secretary is authorized to designate an airport (other than an airport designated before August 24, 1994) only if:

(1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. Sec. 2687 (announcement of closures of large Department of Defense installations after September 30, 1977), or under Section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or

(2) The airport is a military installation with both military and civil aircraft operations.

The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance airport and air traffic control system capacity in metropolitan areas, or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Applications must be received on or before February 15, 2008.

ADDRESSES: Submit an original and two copies of *Standard Form (SF) 424*, ''Application for Federal Assistance,'' prescribed by the Office of Management and Budget Circular A–102, available at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc* along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2008 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the *FAA Web* site *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball (*Kendall.Ball@faa.gov*), Airports Financial Assistance Division (APP–500), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–7436.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated to the MAP may obtain funds from a set-aside (currently four percent) of AIP discretionary funds for airport development, including certain projects not otherwise eligible for AIP assistance. These airports are also eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year (FY) may participate in the MAP. There are 7 slots available for designation or redesignation in FY 2008. Of the seven slots available, there is one general aviation slot. Term of Designation.

The maximum term is five fiscal years following designation. The FAA can designate airports for a period of less than five years. The FAA will evaluate the conversion needs of the airport in its capital development plan to determine the appropriate length of designation.

Redesignation

Previously designated airports may apply for redesignation of an additional term not to exceed five years. Those airports must meet current eligibility requirements in the 49 U.S.C. 47118(a) at the beginning of each grant period and have MAP eligible projects. The FAA will evaluate applications for redesignation primarily in terms of warranted projects fundable only under the MAP as these candidates tend to have fewer conversion needs than new candidates. The FAA wants MAP airports to graduate to regular AIP participation.

Eligible Projects

In addition to eligible AIP projects, MAP can fund fuel farms, utility systems, surface automobile parking lots, hangers, and air cargo terminals up to 50,000 square feet. Designated or redesignated military airports can receive not more than $7,000,000 for each fiscal year after 2005 for projects to construct, improve, or repair terminal building facilities. Designated or redesignated military airports can receive not more than $7,000,000 for each fiscal year after 2005 for MAP eligible projects that include hangers, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Consideration

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(1) The airport is a former military installation closed or realigned under:

(A) Section 2687 of Title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations; and

(3) The airport is classified as a commercial service or reliever airport in the NPIAS. (See 49 U.S.C. 47105(b)(2)). One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 49 U.S.C. 47102(1), (20)) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687. (See 49 U.S.C. 47118(g)). A general aviation airport must qualify under (1) above.

In designating new candidate airports, the Secretary shall consider if a grant would:

(1) Reduced delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed projects would contribute to reducing delays and/or how the airport would enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently realigned or closed military airports, as well as active military airfields with new joint-use agreements, have the greatest need of funding to convert to, or to incorporate, civil airport operations. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five-year Airport Capital Improvement Plan (ACIP). These projects need to be related to development of that airport and/or the air traffic control system capacity.

1. The FAA will evaluate candidate airports and/or the airports such candidate airports would relieve based on the following specific factors:

• Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;

• The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;

• Landside surface access;

• Airport operational capability, including peak hour and annual capacities of the candidate airport;

• Potential of other metropolitan area airports to relieve the congested airport;

• Ability to satisfy, relieve, or meet air cargo demand within the metropolitan area;

• Forecasted aircraft and passenger levels, type of commercial service anticipated, i.e., scheduled or charter commercial service;

• Type and capacity of aircraft projected to serve the airport and level of operations at the relieved airport and the candidate airport;

• The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;

• Ability to replace an existing commercial service or reliever airport serving the area; and

• Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs that, if funded, would make the airport a viable civil airport that will enhance system capacity or reduce delays.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424, Application for Federal Assistance, and provide supporting documentation to the appropriate FAA Airports regional or district office serving that airport.

Standard Form 424:

Sponsors may obtain this fillable form at *http://www.faa.gov/airports_airtraffic/airports/regional_guidance/northwest_mountain/airports_resources/forms/media/applications/application_sf_424.doc.*

Applicants should fill this form out completely, including the following:

• Mark Item 1, Type of Submission as a ''pre-application'' and indicate it is for ''construction''.

• Mark Item 8, Type of Application as ''new'', and in ''other'', fill in ''Military Airport Program''.

• Fill in Item 11, Descriptive Title of Applicants Project. ''Designation (or redesignation) to the Military Airport Program''.

• In Item 15a, Estimated Funding, indicate the total amount of funding requested from the MAP during the entire term for which you are applying.

Supporting Documentation

(A) Identification as a Current or Former Military Airport. The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under Section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act, and/or Section 2905 of the Defense Base Closure and Realignment Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commission), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by Department of Defense (DOD) pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date the property was deeded to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. A general aviation airport applying for the MAP may be joint-use but must also qualify under (1) or (2) above.

(B) Qualifications for MAP:

Submit documents for (1) through (7) below:

(1) Documentation that the airport meets the definition of a ''public airport'' as defined in 49 U.S.C. Sec. 47102(20).

(2) Documentation indicating the required environmental review for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or finalize a joint-use agreement has been completed. The military department conveying or leasing the property, or entering into a joint-use agreement, has the lead responsibility for this environmental review. To meet AIP requirements the environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or assures that good title will be acquired.

(3) For a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or longer to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Federal Government is sufficient to indicate the eligible airport sponsor holds or will hold satisfactory title or a long-term lease.

(4) For a current military airport, documentation that the airport sponsor has an existing joint-use agreement with military department having jurisdiction over the airport. For all first time applicants a copy of the existing joint-use agreement must be submitted with the application. This is necessary so the FAA can legally issue grants to the sponsor. Here and in (3) directly above, the airport must posses the necessary property rights in order to accept a grant for its proposed projects during FY 2008.

(5) Documentation that the airport is classified as a ''commercial service airport'' or a ''reliever airport'' as defined in 49 U.S.C. 47102(7) and 47102(22), unless the airport is applying for the general aviation slot.

(6) Documentation that the airport owner is an eligible airport ''sponsor'' as defined in 49 U.S.C. 47102(24).

(7) Documentation that the airport has a FAA approved airport layout plan (ALP) and a five-year airport capital improvement plan (ACIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(C) Evaluation Factors:

Submit information on the items below to assist in our evaluation: (1) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(2) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport. Include how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or enhance capacity in a metropolitan area or reduce current and projected flight delays.

(3) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near the airport. Include a discussion of whether operations at this airport create airspace conflicts that may cause congestion or whether air traffic works into the flow of other air traffic in the area.

(4) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity, and conversion-related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(5) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint-use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected (e.g., safety-related, conversion-related, and/or capacity-related), must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion- or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

- Modification of airport or military airfield for safety purposes, including airport pavement modifications (e.g., widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in *14 CFR part 77*.
- Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.
- Modifications, which will permit the airfield to accommodate general aviation users.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(6) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(7) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(8) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion-related projects. Other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should also be included. You may also provide photos, which would further describe the airport, projects, and otherwise clarify certain aspects of this application. These maps and ALPs should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program must submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports must indicate their application is for redesignation to the MAP. In addition to the above information, they must explain:

(1) Why a redesignation and additional MAP-eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation not to exceed five years;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport; and

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued at Washington, DC, on December 7, 2007.

Wayne Herbeck,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 07–6068 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2007–0027]

Notice of Request for a New Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comments about our intention to request the Office of Management and Budget's (OMB) to approve a new collection: 49 U.S.C. 5317, New Freedom Program. The information to be collected will be used to accumulate mass transportation financial and operating information using a uniform system of accounts and records. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on October 2, 2007.

DATES: Comments must be submitted before January 16, 2008. A comment to

OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: LaStar Matthews, Office of Administration, Office of Management Planning, (202) 366–2295.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 5317, New Freedom Program *(OMB Number: 2132–NEW).*

Abstract: Title 49 U.S.C. Section 5317 authorizes the Secretary of Transportation to make grants to states and designated recipients in urbanized areas of 200,000 persons or greater to reduce barriers to transportation services and expand the transportation mobility options available to people with disabilities beyond the requirements of the Americans with Disabilities Act (ADA) of 1990. Grant recipients are required to make information available to the public and to publish a program of projects which identifies the subrecipients and projects for which the State or designated recipient is applying for financial assistance. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA collects performance information from designated recipients in rural areas, small urbanized areas and other direct recipients for small urbanized areas annually and collects performance information from designated recipients in large urbanized areas on a quarterly basis. The information submitted ensures FTA's compliance with applicable federal laws and OMB Circular A–102.

Estimated Total Annual Burden: 122,374 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: December 10, 2007.

Ann Linnertz,

Associate Administrator for Administration.

[FR Doc. E7–24400 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2007–0028]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on October 1, 2007. No comments were received in response to that notice.

DATES: Comments must be submitted before January 16, 2008. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: LaStar Matthews, Office of Administration, Office of Management Planning, (202) 366–2295 or *e-mail: LaStar.Matthews@dot.gov*.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR Part 611 Major Capital Investment Projects (*OMB Number: 2132–0561*).

Abstract: On August 10, 2005, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted. Sections 3011(d)(5) and 3011(e)(6) of SAFETEA–LU require FTA to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems (''New Starts,'' ''Small Starts,'' respectively) will be evaluated and rated for purposes of the FTA Capital Investment Grants and Loans program for New and Small Starts under 49 U.S.C. 5309. The Advanced Notice of Proposed Rulemaking (ANPRM) for this regulation was issued on January 30, 2006, (71 FR 22841). The Notice of Proposed Rulemaking (NPRM) was issued on August 3, 2007, (72 FR 43328).

FTA has a longstanding requirement to evaluate proposed projects against a prescribed set of statutory criteria. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) established in law a set of criteria that proposed projects had to meet in order to be eligible for federal funding. The requirement for summary project ratings has been in place since 1998. Thus, the requirements for project evaluation and data collection for New Starts projects are not new, nor have they changed extensively since their inception. One addition included in SAFETEA–LU is the Small Starts program. The Small Starts program enables projects with a lesser total capital cost and smaller requested share of New Starts funds to progress through a simplified and streamlined project evaluation and data collection process. In general, though, the information used by FTA for New and Small Starts project evaluation and rating purposes should arise as a part of the normal planning process.

FTA has been collecting project evaluation information from project sponsors under the existing OMB approval for this program (OMB No. 2132–0561). However, due to modifications in project evaluation criteria for the New Starts program and the addition of the Small Starts program, it became apparent that some information required under this proposed rule might be beyond the scope of ordinary planning activities.

The proposed rule creates additional requirements for before-and-after data collection for purposes of Government Performance and Results Act reporting as a condition of obtaining a Full Funding Grant Agreement (FFGA) or a Project Construction Grant Agreement (PCGA).

Estimated Total Annual Burden: 38,760 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, *Attention:* FTA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of

automated collection techniques or other forms of information technology.

Issued: December 10, 2007.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E7–24422 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on April 27, 2007 (72 FR 21068–21069).

DATES: Comments must be submitted on or before January 16, 2008.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, *Attention:* NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Behavioral Safety Research (NTI–131), 202–366–6401, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 2008 National Survey of Drinking and Driving Attitudes and Behavior.

OMB Number: 2127–New.

Type of Request: New information collection requirement.

Abstract: The National Survey of Drinking and Driving Attitudes and Behavior is conducted on a periodic basis for the National Highway Traffic Safety Administration to obtain a status report on attitudes, knowledge, and self-reported behavior related to alcohol-impaired driving. It is a national telephone survey administered to a randomly selected sample of approximately 6,000 persons age 16 and older. Topics covered by the survey include drinking behavior, drinking and driving behavior, avoidance of drinking and driving, use of a designated driver, preventing others from drinking and driving, perceived risks to drinking and driving, perceptions and attitudes about enforcement of drinking and driving laws, knowledge of legal BAC limits, and perceived effectiveness of intervention strategies. The proposed survey is the eighth in the series, which began in 1991. The 2008 survey will repeat many of the questions included in the preceding surveys in order to monitor change over time. The survey will also include new questions that address emergent issues in the area of drinking and driving. The data will be applied to strategic planning to combat the drinking and driving problem, and provide guidance to current programs.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 2,006 hours (18 pretest interviews averaging 20 minutes per interview, followed by 6,000 interviews averaging 20 minutes per interview administered to the final survey sample).

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued on: December 12, 2007.

Marilena Amoni,

Associate Administrator, Research and Program Development.

[FR Doc. E7–24379 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration; Highway Safety Programs

[Docket No. NHTSA–2007–0028]

Conforming Products List of Evidential Breath Alcohol Measurement Devices

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice updates the Conforming Products List (CPL) published in the **Federal Register** on June 29, 2006 (71 FR 37159) for instruments that conform to the Model Specifications for Evidential Breath Testing Devices (58 FR 48705).

DATES: Effective Date: December 17, 2007.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. De Carlo Ciccel, Behavioral Research Division, NTI–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone; (202) 366–1694. *For legal issues:* Ms. Allison Rusnak, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices (Model Specifications), and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice (49 FR 48864).

On September 17, 1993, NHTSA published a notice to amend the Model Specifications (58 FR 48705) and update the CPL. That notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC. These devices are identified on the CPL with an asterisk. Additionally, that notice includes a test for the presence of acetone and an expanded definition of

alcohol to include other low molecular weight alcohols; e.g., methyl or isopropyl. Thereafter, NHTSA has periodically updated the CPL with those breath instruments found to conform to the Model Specifications. The most recent update to the CPL was published June 29, 2006 (71 FR 37159).

The CPL published today adds 6 instruments that have been evaluated and found to conform to the Model Specifications, as amended on September 17, 1993, for mobile and non-mobile use. In alphabetical order by company, they are:

(1) Intoxilyzer 240 (aka: Lion Alcolmeter 400+, outside U.S.) manufactured by CMI, Inc., Owensboro, Kentucky. This is a handheld device intended for use in stationary or roadside operations. It uses a fuel cell sensor and is powered by 5 ''AA'' batteries.

(2) The ''Alcotest 9510'' manufactured by Draeger Safety, Inc., Durango, Colorado. This is a bench-top device intended for use in a stationary setting. It is AC-powered and has dual sensors. The Alcotest 9510 uses both a fuel cell sensor and a 9-micron infra-red type sensor to measure mouth alcohol.

(3) The ''AlcoQuant 6020'' manufactured by EnviteC by Honeywell GmbH, Fond du Lac, Wisconsin. This is a handheld device intended for use in stationary or roadside operations. It uses a fuel cell sensor and is powered by 4 ''AA'' batteries.

(4) The ''EC–IR–II (Enhanced with serial numbers above 10,000)'' manufactured by Intoximeters, Inc., St. Louis, Missouri. This is a bench-top, dual sensor device intended for stationary operations, and it is AC powered. This EC–IR–II uses a fuel cell sensor to determine breath alcohol concentration. The device also uses an infra-red type sensor to screen for mouth alcohol. The original EC–IR–II design was modified to incorporate additional test memory capacity, additional hardware to allow recirculation of a wet bath simulator, and enhanced EMC and RFI immunity. This model with the enhancements has an external and internal printer production option available.

(5) The ''Phoenix 6.0'' manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado. This is a handheld device that uses a fuel cell sensor and is powered by an internal battery. It is intended for stationary or roadside operations. The Phoenix 6.0 has the same core electronics, fuel cell, pump, and algorithms as the Lifeloc EV30. Enhancements of the Phoenix 6.0 include high resolution display, wireless printing, barometric pressure sensor (to assist with dry gas calibrations), and Easy Mode™ software to guide the user through the DOT testing protocol.

(6) The ''ALC–PRO II (US)'', manufactured by Tokai-Denshi, Inc., Tokyo, Japan. This device is a handheld battery-powered breath tester with a fuel cell sensor. The breath tester is connected to a 10.5″ by 7.5″ by 5″ AC powered analytical unit. It is intended for stationary or roadside operations.

The CPL has been updated to include the six instruments identified above.

In accordance with the foregoing, the CPL is therefore updated, as set forth below

Conforming Products List of Evidential Breath Measurement Devices

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp, Mississauga, Ontario, Canada:		
Alert J3AD*	X	X
Alert J4X.ec	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer*	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, Kentucky:		
Intoxilyzer Model:		
200	X	X
200D	X	X
240 (aka: Lion Alcolmeter 400+ outside the U.S.)	X	X
300	X	X
400	X	X
400PA	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X
5000	X	X
5000 (w/Cal Vapor Re-Circ.)	X	X
5000 (w/⅜'' ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
8000	X	X
PAC 1200*	X	X
S–D2	X	X
S–D5 (aka: Lion Alcolmeter SD–5 outside the U.S.)	X	X
Draeger Safety, Inc. (aka: National Draeger) Durango, Colorado:		

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
Alcotest Model:		
6510	X	X
6810	X	X
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
9510		X
Breathalyzer Model:		
900	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
EnviteC by Honeywell GmbH, Fond du Lac, Wisconsin:		
AlcoQuant 6020	X	X
Gall's Inc, Lexington, Kentucky:		
Alcohol Detection System-A.D.S. 500	X	X
Guth Laboratories, Inc., Harrisburg, Pennsylvania:		
Alcotector BAC–100	X	X
Alcotector C_2H_5OH	X	X
Intoximeters, Inc., St. Louis, Missouri:		
Photo Electric Intoximeter*		X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV–XL	X	X
Alco-Sensor AZ	X	X
Alco-Sensor FST	X	X
EC/IR	X	X
EC/IR II	X	X
EC/IR II (Enhanced with serial number 10,000 or higher)		X
Portable EC/IR II	X	X
RBT–AZ	X	X
RBT–III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Komyo Kitagawa, Kogyo, K.K., Japan:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, Colorado:		
PBA 3000B	X	X
PBA 3000–P*	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Phoenix	X	X
Phoenix 6.0	X	X
EV 30	X	X
FC 10	X	X
FC 20	X	X
Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom:		
Alcolmeter Model:		
300	X	X
400	X	X
400+ (aka: Intoxilyzer 240 in the U.S.)	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
SD–2*	X	X
SD–5 (aka: S–D5 in the U.S.)	X	X
EBA*	X	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernardino, California:		
Alco-Analyzer Model:		
1000*		X
2000*		X
National Patent Analytical Systems, Inc., Mansfield, Ohio:		
BAC DataMaster (with or without the Delta-1 accessory)		
BAC Verifier DataMaster (w/ or without the Delta-1 accessory)	X	X
DataMaster cdm (w/ or without the Delta-1 accessory)	X	X
DataMaster DMT	X	X
Omicron Systems, Palo Alto, California:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, Colorado:		
5000 Plus 4*	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, New Jersey:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, Massachusetts:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Sound-Off, Inc., Hudsonville, Michigan:		
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp:		
Breathalyzer 900*	X	X
Tokai-Denshi Inc., Tokyo, Japan:		
ALC–PRO II (US)	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, California:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, New York:		
BAC Verifier*	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II*	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(Authority: 23 USC 403; 49 CFR 150; 49 CFR Part 501).

Marilena Amoni,

Associate Administrator for the Office of Research and Program Development.

[FR Doc. 07–6040 Filed 12–14–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–364 (Sub-No. 11X)]

Mid-Michigan Railroad, Inc.—Abandonment Exemption—In Kent and Montcalm Counties, MI

On November 27, 2007, Mid-Michigan Railroad, Inc. (MMRR or petitioner), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to permit the abandonment of a 24.70-mile rail line located between milepost 103.20 in Lowell and milepost 78.50 in Greenville at the end of the line, in Kent and Montcalm Counties, MI. The line traverses U.S. Postal Service Zip Codes 48809, 48838, 48887, and 49331, and

includes the stations of Lowell, Belding, and Greenville.

In addition to an exemption from 49 U.S.C. 10903, MMRR seeks an exemption from 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures]. In support, MMRR states that it has entered a Memorandum of Understanding with the West Michigan Trails and Greenways Coalition (WMTGC) to sell the line to WMTGC for the public purpose of converting it to interim trail use/rail banking. This request will be addressed in the final decision.

MMRR states that, based on information in its possession, the line does not contain federally granted rights-of-way. Any documentation in MMRR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Petitioner believes that the proposed abandonment may generate comments and requests that the Board adopt a procedural schedule in this proceeding to permit MMRR to file rebuttal to any reply received. Rather than address the request at this time, however, the Board will instead allow petitioner to raise the matter again, if it wishes, once comments and replies in response to the petition have actually been filed. Comments and replies to the petition for exemption will be due January 11, 2008. Once comments or replies have been filed, MMRR may request leave to file rebuttal.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 14, 2008, unless the Board grants the requested exemption from the OFA process.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 7, 2008. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–364 (Sub-No. 11X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 11, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–24311 Filed 12–14–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Six Individuals Pursuant to Executive Order 13315

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of six newly designated individuals whose property and interests in property are blocked pursuant to Executive Order 13315 of August 28, 2003, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions.''

DATES: The designation by the Secretary of the Treasury of the six individuals identified in this notice pursuant to Executive Order 13315 is effective on December 6, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On August 28, 2003, the President issued Executive Order 13315 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, section 5 of the United Nations Participation Act, as amended, 22 U.S.C. 287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property of the former Iraqi regime or its state bodies, corporations, or agencies, or of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons: persons listed in the Annex to the Order, as well as persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State, (1) to be senior officials of the former Iraqi regime or their immediate family members; or (2) to be owned or controlled by, or acting or purporting to act for or on behalf of,

directly or indirectly, any person whose property or interests in property are blocked pursuant to the Order.

On December 6, 2007, the Secretary of the Treasury, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in the Order, six individuals whose property and interests in property are blocked pursuant to Executive Order 13315.

The list of additional designees is as follows:

1. AL-AHMAD, Ahmad Muhammad Yunis (a.k.a. AL-BADANI, Ahmad Muhammad Mahmud 'Abdallah; a.k.a. AL-BARRANI, Ahmad Muhammad Al-Abdullah), Al-Mazzah Al-Jabal District, 6 Subdistrict, 3 area, Al-Iskan complex, 40/2, Fifth Floor, Damascus, Syria; DOB 19 Sep 1978; POB Al-Anbar, Iraq; nationality Iraq; Passport H0347417 (Iraq) issued 20 Feb 2003 expires 19 Feb 2011.

2. AL-AHMAD, Sa'ad Muhammad Yunis, Damascus, Syria; DOB 1 Jan 1981; POB Baghdad, Iraq; nationality Iraq; Identification Number 159014.

3. AL-AZAWI, Hatem Hamdan, Diyali, Al-Khalis Sector, Iraq; Deli Abbas, Iraq; DOB circa 1937.

4. AL-DULAYMI, Hasan Hashim Khalaf (a.k.a. ''ABU WISSAM''), 30th Street, Al-Yarmuk Area, Jadat Al-Jaysh District, Damascus, Syria; House #43, Lane #17, Subdivision #808, Al-Dawrah, Baghdad, Iraq; DOB 1942; POB Baghdad, Iraq; nationality Iraq

5. AL-DURI, Thabet, Karkh District, Baghdad, Iraq; Rukan al-Din, Syria; DOB 1943; alt. DOB 1944; POB Dur, Iraq.

6. AL-TIKRITI, Ahmed Watban Ibrahim Hasan (a.k.a. AL-TIKRITI, Ahmad Watban Ibrahim Hasan; a.k.a. MUHAWDAR, 'Imad 'Udi), Al-Hadda Hotel, Sana'a, Yemen; Al-Ra'is Building, Mina Street, Tartus , Tartus, Syria; Jirmanah Neighborhood, Damascus, Syria; DOB 1975; alt. DOB 1979; POB Baghdad, Iraq; nationality Iraq.

Dated: December 6, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–24342 Filed 12–14–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of One Individual Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13224, is effective on December 6, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 6, 2007, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

AL-RAWI, Fawzi Mutlaq (a.k.a. AL-RAWI, Fawzi Isma'il Al-Husayni; a.k.a. ''ABU AKRAM''; a.k.a. ''ABU FIRAS''), SYRIAN BA'TH PARTY COMMAND BUILDING, AL-HALBUNI DISTRICT, DAMASCUS, Syria; SYRIAN GOVERNMENT-OWNED APARTMENT, AL-MAZZAH DISTRICT, DAMASCUS, Syria; DOB 1940; POB RAWAH CITY, IRAQ; citizen Syria; nationality Iraq; CHAIRMAN, IRAQI WING OF THE SYRIAN BA'TH PARTY

Dated: December 6, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–24343 Filed 12–14–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of One Individual Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13224, is effective on December 4, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On December 4, 2007, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The designee is as follows:

DROUKDEL, Abdelmalek (a.k.a. ABD AL-WADOUB, Abdou Moussa; a.k.a. ABD EL OUADOUD, Abou Mossab; a.k.a. ABD EL OUADOUD, Abou Mousab; a.k.a. ABD EL-OUADOUD, Abi Mossaab; a.k.a. ABD-AL-WADUD, Abu-Mus'ab; a.k.a. ABDEL EL-WADOUD, Abu Mossaab; a.k.a. ABDEL WADOUD, Abou Mossab; a.k.a. ABDEL WADOUD, Abou Moussaab; a.k.a. ABDELMALEK, Drokdal; a.k.a. ABDELMALEK, Droukdal; a.k.a. ABDELMALEK, Droukdel; a.k.a. ABDELOUADODUD, Abu Mussaab; a.k.a. ABDELOUADOUD, Abi Mousaab; a.k.a. ABDELOUADOUD, Abou Mossaab; a.k.a. ABDELOUADOUD, Abou Mossab; a.k.a. ABDELOUADOUD, Abou Mousaab; a.k.a. ABDELOUADOUD, Abou Moussab; a.k.a. ABDELOUADOUD, Abou Musab; a.k.a. ABDELOUADOUD, Abu Mossab; a.k.a. ABDELOUADOUD, Abu Mus'ab; a.k.a. ABDELOUADOUDE, Abou Moussaab; a.k.a. ABDELOUDOUD, Abu Musab; a.k.a. ABDELWADOUD, Abou Mossab; a.k.a. ABKELWADOUD, Abou Mosaab; a.k.a. ABOU MOSSAAB, Abdelwadoud; a.k.a. ABOU MOSSAAH, Abdelouadoud; a.k.a. ABOU MOSSAB, Abdelouadoud; a.k.a. ABU MUSAB, Abdelwadoud; a.k.a. DARDAKIL, Abdelmalek; a.k.a. DERDOUKAL, Abdelmalek; a.k.a. DEROUDEL, Abdel Malek; a.k.a. DOURKDAL, Abdelmalek; a.k.a. DRIDQAL, Abd-al-Malik; a.k.a. DROKDAL, 'Abd-al-Malik; a.k.a. DROKDAL, Abdelmalek; a.k.a. DROUGDEL, Abdelmalek; a.k.a. DROUKADAL, Abdelmalek; a.k.a. DROUKBEL, Abdelmalek; a.k.a. DROUKDAL, Abdelmalek; a.k.a. DROUKDAL, Abdelmalik; a.k.a. DROUKDEL, Abdel Malek; a.k.a. DROUKDEL, Abdelouadour; a.k.a. DRUKDAL, 'Abd al-Malik; a.k.a. DURIKDAL, 'Abd al-Malik; a.k.a. OUDOUD, Abu Musab; a.k.a. ''ABDELWADOUD, Abou''), Meftah, Algeria; DOB 20 Apr 1970; POB Meftah, Algeria; alt. POB Khemis El Khechna, Algeria; nationality Algeria.

Dated: December 5, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–24344 Filed 12–14–07; 8:45 am]

BILLING CODE 4811–45–P

Federal Register

Monday,
December 17, 2007

Part II

Environmental Protection Agency

40 CFR Part 50

National Ambient Air Quality Standards for Lead; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2006–0735; FRL–8503–8]

RIN 2060–AN83

National Ambient Air Quality Standards for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: EPA is issuing this ANPR to invite comment from all interested parties on policy options and other issues related to the Agency's ongoing review of the national ambient air quality standards (NAAQS) for lead (Pb). Consistent with recent modifications the Agency has made to its process for reviewing NAAQS, we are seeking broad public comment at this time to help inform the Agency's future proposed decisions on the adequacy of the current Pb NAAQS and on any revisions of the Pb NAAQS that may be appropriate. EPA is also soliciting comment on retaining Pb on the list of criteria pollutants and on maintaining NAAQS for Pb.

As part of this review, the Agency has released several key documents that will inform the Agency's rulemaking. These documents include the *Air Quality Criteria for Lead,* released in 2006, which critically assesses and integrates relevant scientific information; risk assessment reports including the most recent report, *Lead: Human Exposure and Health Risk Assessment for Selected Case Studies,* which documents quantitative exposure analyses and risk assessments conducted for this review; and a recently released Staff Paper, *Review of the National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and Technical Information,* which presents an evaluation by staff in EPA's Office of Air Quality Planning and Standards (OAQPS) of the policy implications of the scientific information and quantitative assessments and OAQPS staff conclusions and recommendations on a range of policy options for the Agency's consideration.

Under the terms of a court order, the Administrator will sign by September 1, 2008 a Notice of Final Rulemaking for publication in the **Federal Register**. To meet this schedule, we anticipate the Administrator will sign a Notice of Proposed Rulemaking in March 2008 for publication in the **Federal Register**, at which time further opportunity for public comment will be provided.

DATES: Comments must be received by January 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0735 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:* Docket No. EPA–HQ–OAR–2006–0735, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2006–0735, Environmental Protection Agency, EPA West, Room 3334, 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–OAR–2006–0735. The 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.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre Murphy, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; *telephone:* 919–541–0729; *fax:* 919–541–0237; e-mail: *Murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date and page number).

- Follow directions—the agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Availability of Related Information

A number of documents relevant to this rulemaking, including the *Air Quality Criteria for Lead* (Criteria Document) (USEPA, 2006a), the Staff Paper, related risk assessment reports, and other related technical documents are available on EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html*. These and other related documents are also available for inspection and copying in the EPA docket identified above.

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I. Introduction

In the past year EPA has instituted a number of changes to the process that the Agency uses in reviewing the NAAQS to help to improve the efficiency of the process while ensuring that the Agency's decisions are informed by the best available science and broad participation among experts in the scientific community and the public (described at *http://www.epa.gov/ttn/naaqs/*). These changes apply to the four major components of the NAAQS review process: planning, science assessment, risk/exposure assessment, and policy assessment/rulemaking. The process improvements will help the Agency meet the goal of reviewing each NAAQS on a 5-year cycle as required by the Clean Air Act (CAA) without compromising the scientific integrity of the process. These changes are being incorporated into the various ongoing NAAQS reviews being conducted by the Agency, including the current review of the Pb NAAQS.

The issuance of this ANPR is one of the key features of the new NAAQS review process. Historically, a policy assessment that evaluates the policy implications of the available scientific information and risk/exposure assessments has been presented in the form of a Staff Paper, prepared by staff in EPA's OAQPS, which included OAQPS staff conclusions and recommendations on a range of policy options for the Agency's consideration. The new process will enable broader participation of the scientific community and the public early in the NAAQS review by providing scientific information, risk/exposure assessments, and policy options in an ANPR rather than a Staff Paper. The purpose of the ANPR is to identify conceptual evidence- and risk-based approaches for reaching policy judgments, discuss what the science and risk/exposure assessments say about the adequacy of the current standards, and describe a range of options for standard setting, in terms of indicators, averaging times, forms, and ranges of levels for any alternative standards. Discussion of alternative standards is to include a description of the underlying interpretations of the scientific evidence and risk/exposure information that might support such alternative standards and that could be considered by the Administrator in making NAAQS decisions. The issuance of an ANPR provides the opportunity for the Clean Air Scientific Advisory Committee (CASAC) [1] and the public to evaluate and provide comment on a broad range of policy options being considered by the Administrator.

In the case of this Pb NAAQS review, which was initiated well before changes were instituted to the NAAQS review process, both an OAQPS Staff Paper and an ANPR are being issued. As discussed below in section II, the issuance of both documents reflects the terms of a court order that governs this review and requires that a final OAQPS Staff Paper be issued. As a consequence, in addition to soliciting comment, this ANPR summarizes information from the OAQPS Staff Paper (referred to as Staff Paper throughout this notice) and from

[1] As discussed below in section II, CASAC is the independent scientific review committee that provides advice and recommendations to the EPA Administrator related to periodic reviews of NAAQS, as mandated by the Clean Air Act.

the Agency's risk assessment and Criteria Document. This ANPR is structured such that policy options on adequacy of the current standards and aspects of potential alternative standards are discussed in Sections III.C and IV.C. Preceding those policy discussions are sections focused on health and welfare effects in Sections III.A and IV.A, respectively, and on human exposure and risk and ecological risk in Sections III.B and IV.B, respectively.

II. Background

A. Legislative Requirements

Two sections of the Clean Air Act (Act) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list each air pollutant that ''in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare'' and whose ''presence * * * in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those that are listed. Air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *''. Section 108 also states that the Administrator ''shall, from time to time * * * revise a list'' that includes these pollutants, which provides the authority for a pollutant to be removed from or added to the list of criteria pollutants.

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants listed under section 108. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which in the judgment of the Administrator, based on [air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' [2] A secondary standard, as defined in Section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' [3]

The requirement that primary standards include an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (DC Cir 1980), *cert. denied*, 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree.

In selecting a margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, supra, 647 F.2d at 1161–62.

In setting standards that are ''requisite'' to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider the costs of implementing the standards. See generally *Whitman* v. *American Trucking Associations*, 531 U.S. 457, 471, 475–76 (2001).

Section 109(d)(1) of the Act requires that ''Not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.'' Section 109(d)(2)(A) requires that ''The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.'' Section 109(d)(2)(B) requires that, ''Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 108 and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section.'' [4] Since the early 1980's, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

B. History of Lead NAAQS Reviews

On October 5, 1978 EPA promulgated primary and secondary NAAQS for Pb under section 109 of the Act (43 FR 46246). Both primary and secondary standards were set at a level of 1.5 micrograms per cubic meter (μg/m^3), measured as Pb in total suspended particulate matter (Pb-TSP), not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. This standard was based on the 1977 *Air Quality Criteria for Lead* (USEPA, 1977).

[2] The legislative history of section 109 indicates that a primary standard is to be set at ''the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population,'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group.'' S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970)

[3] Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

[4] In addition to the provisions of Section 109(d)(2)(B), concerning the role of CASAC in providing advice and recommendations to the Administrator on the criteria and standards, Section 109(d)(2)(C) provides that CASAC shall also, ''(i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.''

A review of the Pb standards was initiated in the mid-1980s. The scientific assessment for that review is described in the 1986 *Air Quality Criteria for Lead* (USEPA, 1986a), the associated Addendum (USEPA, 1986b) and the 1990 Supplement (USEPA, 1990a). As part of the review, the Agency designed and performed human exposure and health risk analyses (USEPA, 1989), the results of which were presented in a 1990 Staff Paper (USEPA, 1990b). Based on the scientific assessment and the human exposure and health risk analyses, the 1990 Staff Paper presented options for the Pb NAAQS level in the range of 0.5 to 1.5 $\mu g/m^3$, and suggested the second highest monthly average in three years for the form and averaging time of the standard (USEPA, 1990b). After consideration of the documents developed during the review and the significantly changed circumstances since Pb was listed in 1976, as noted above, the Agency did not propose any revisions to the 1978 Pb NAAQS. In a parallel effort, the Agency developed the broad, multi-program, multimedia, integrated *U.S. Strategy for Reducing Lead Exposure* (USEPA, 1991). As part of implementing this strategy, the Agency focused efforts primarily on regulatory and remedial clean-up actions aimed at reducing Pb exposures from a variety of nonair sources judged to pose more extensive public health risks to U.S. populations, as well as on actions to reduce Pb emissions to air.

C. Current Related Lead Control Programs

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act (42 U.S.C. 7410) and related provisions, States are to submit, for EPA approval, State implementation plans (SIP's) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration program (42 U.S.C. 7470–7479) for these pollutants. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal Motor Vehicle Control Program under Title II of the Act (42 U.S.C. 7521–7574), which involves controls for automobile, truck, bus, motorcycle, nonroad engine, and aircraft emissions; the new source performance standards under section 111 of the Act (42 U.S.C. 7411); and the national emission standards for hazardous air pollutants under section 112 of the Act (42 U.S.C. 7412).

As Pb is a multimedia pollutant, a broad range of Federal programs beyond those identified above that focus on air pollution control provide for nationwide reductions in environmental releases and human exposures. The Centers for Disease Control and Prevention (CDC) programs provide for the tracking of children's blood Pb levels nationally and provide guidance on levels at which medical and environmental case management activities should be implemented (CDC, 2005a; ACCLPP, 2007).[5] In 1991, the Secretary of the Health and Human Services (HHS) characterized Pb poisoning as the ''number one environmental threat to the health of children in the United States'' (Alliance to End Childhood Lead Poisoning. 1991). And, in 1997, President Clinton created, by Executive Order 13045, the President's Task Force on Environmental Health Risks and Safety Risks to Children in response to increased awareness that children face disproportionate risks from environmental health and safety hazards (62 FR 19885).[6] By Executive Orders issued in October 2001 and April 2003, President Bush extended the work for the Task Force for an additional three and a half years beyond its original charter (66 FR 52013 and 68 FR 19931). The Task Force set a Federal goal of eliminating childhood Pb poisoning by the year 2010 and reducing Pb poisoning in children was the Task Force's top priority.

Federal abatement programs provide for the reduction in human exposures and environmental releases from in-place materials containing Pb (e.g., Pb-based paint, urban soil and dust and contaminated waste sites). Federal regulations on disposal of Pb-based paint waste help facilitate the removal of Pb-based paint from residences (See ''Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste; Final Rule'' EPA–HQ–RCRA–2001–0017). Further, in 1991, EPA lowered the maximum levels of Pb permitted in public water systems from 50 parts per billion (ppb) to 15 ppb (56 FR 26460).

Federal programs to reduce exposure to Pb in paint, dust and soil are specified under the comprehensive federal strategy developed under the Residential Lead-Based Paint Hazard Reduction Act (Title X). Under Title X and Title IV of the Toxic Substances Control Act, EPA has established regulations in the following four categories: (1) Training and certification requirements for persons engaged in lead-based paint activities; accreditation of training providers; work practice standards for the safe, reliable, and effective identification and elimination of lead-based paint hazards; (2) Ensuring that, for most housing constructed before 1978, lead-based paint information flows from sellers to purchasers, from landlords to tenants, and from renovators to owners and occupants; (3) Establishing standards for identifying dangerous levels of lead in paint, dust and soil; and (4) Providing information on lead hazards to the public, including steps that people can take to protect themselves and their families from lead-based paint hazards.

Under Title X of TSCA, EPA established dust lead standards for residential housing and soil dust in 2001. This regulation supports the implementation of other regulations which deal with worker training and certification, lead hazard disclosure in real estate transactions, lead hazard evaluation and control in federally-owned housing prior to sale and housing receiving Federal assistance, and U.S. Department of Housing and Urban Development grants to local jurisdictions to perform lead hazard control. In addition, this regulation also establishes, among other things, under authority of TSCA section 402, residential lead dust cleanup levels and amendments to dust and soil sampling requirements (66 FR 1206). The Title X term ''lead-based paint hazard'' implemented through this regulation identifies lead-based paint and all residential lead-containing dusts and soils regardless of the source of lead, which, due to their condition and location, would result in adverse human health effects. One of the underlying principles of Title X is to move the focus of public and private decision makers away from the mere presence of lead-based paint, to the presence of lead-based paint hazards, for which more substantive action should be undertaken to control exposures, especially to young children. In addition the success of the program will rely on the voluntary participation of states and tribes as well as counties and cities to implement the programs and on property owners to follow the standards and EPA's recommendations. If EPA

[5] As described in Section III below the CDC stated in 2005 that no ''safe'' threshold for blood Pb levels in young children has been identified (CDC, 2005a).

[6] Co-chaired by the Secretary of the HHS and the Administrator of the EPA, the Task Force consisted of representatives from 16 Federal departments and agencies.

were to set unreasonable standards (e.g., standards that would recommend removal of all lead from paint, dust and soil), States and Tribes may choose to opt out of the Title X lead program and property owners may choose to ignore EPA's advice believing it lacks credibility and practical value. Consequently, EPA needed to develop standards that would not waste resources by chasing risks of negligible importance and that would be accepted by States, Tribes, local governments and property owners.

On January 10, 2006, EPA issued a Notice of Proposed Rulemaking covering renovations performed for compensation in target housing. The 2006 Proposal contains requirements designed to address lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. The 2006 Proposal includes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. The 2006 Proposal proposes to make the rule effective in two stages. Initially, the rule proposes to apply to all renovations for compensation performed in target housing where a child with an increased blood lead level resided and rental target housing built before 1960. The proposed rule also proposes application to owner-occupied target housing built before 1960, unless the person performing the renovation obtained a statement signed by the owner-occupant that the renovation would occur in the owner's residence and that no child under age 6 resided there. As proposed, the rule would take effect one year later in all rental target housing built between 1960 and 1978 and owner-occupied target housing built between 1960 and 1978. EPA also proposes to allow interested States, Territories, and Indian Tribes the opportunity to apply for and receive authorization to administer and enforce all of the elements of the new renovation provisions.

A significant number of commenters observed that the proposal did not cover buildings where children under age 6 spend a great deal of time, such as day care centers and schools. Commenters noted that the risk posed to children from lead-based paint hazards in schools and day-care centers is likely to be equal to, if not greater than, the risk posed from these hazards at home. These commenters suggested that EPA expand its proposal to include such places, and several suggested that EPA use the existing definition of ''child-occupied facility'' in 40 CFR § 745.223 to define the expanded scope of coverage. EPA felt that these comments had merit, and, because adding child-occupied facilities was beyond the scope of the 2006 Proposal, an expansion of the 2006 Proposal was necessary to give this issue full and fair consideration. Accordingly, on June 5, 2007, EPA issued a Supplemental Notice of Proposed Rulemaking to add child-occupied facilities to the universe of buildings covered by the 2006 Proposal. EPA is working expeditiously to finalize this rulemaking and expects to do so in the first calendar quarter of 2008.

Programs associated with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and Resource Conservation Recovery Act (RCRA) also implement abatement programs, reducing exposures to Pb and other pollutants. For example, EPA determines and implements protective levels for Pb in soil at Superfund sites and RCRA corrective action facilities. Federal programs, including those implementing RCRA, provide for management of hazardous substances in hazardous and municipal solid waste (e.g., ''Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes and CERCLA Hazardous Substance Designation and Reportable Quantities; Final Rule'', *http://www.epa.gov/epaoswer/hazwaste/state/revision/frs/fr195.pdf* and *http://www.epa.gov/epaoswer/hazwaste/ldr/basic.htm*). For example, Federal regulations concerning batteries in municipal solid waste facilitate the collection and recycling or proper disposal of batteries containing Pb (e.g., See ''Implementation of the Mercury-Containing and Rechargeable Battery Management Act'' *http://www.epa.gov/epaoswer/hazwaste/recycle/battery.pdf* and ''Municipal Solid Waste Generation, Recycling, and Disposal in the United States: Facts and Figures for 2005'' *http://www.epa.gov/epaoswer/osw/conserve/resources/msw-2005.pdf*). Similarly, Federal programs provide for the reduction in environmental releases of hazardous substances such as Pb in the management of wastewater (*http://www.epa.gov/owm/*).

A variety of federal nonregulatory programs also provide for reduced environmental release of Pb containing materials through more general encouragement of pollution prevention, promote reuse and recycling, reduce priority and toxic chemicals in products and waste, and conserve energy and materials. These include the Resource Conservation Challenge (*http://www.epa.gov/epaoswer/osw/conserve/index.htm*), the National Waste Minimization Program (*http://www.epa.gov/epaoswer/hazwaste/minimize/leadtire.htm*), ''Plug in to eCycling'' (a partnership between EPA and consumer electronics manufacturers and retailers; *http://www.epa.gov/epaoswer/hazwaste/recycle/electron/crt.htm#crts*), and activities to reduce the practice of backyard trash burning (*http://www.epa.gov/msw/backyard/pubs.htm*).

Efforts such as those programs described above have been successful in that blood Pb levels in all segments of the population have dropped significantly from levels around 1990. In particular, blood Pb levels for the general population of children 1 to 5 years of age have dropped to a median level of 1.6 μg/dL and a level of 3.9 μg/dL for the 90th percentile child in the 2003–2004 NHANES as compared to median and 90th percentile levels in 1988–1991 of 3.5 μg/dL and 9.4 μg/dL, respectively (*http://www.epa.gov/envirohealth/children/body_burdens/b1-table.htm*). These levels (median and 90th percentile) for the general population of young children [7] are at the low end of the historic range of blood Pb levels for general population of children aged 1–5 years and are below a level of 5 μg/dL—a level that has been associated with adverse effects with a higher degree of certainty in the published literature (than levels such as 2 μg/dL) and is a level where cognitive deficits were identified with statistical significance (Lanphear et al., 2000). The decline in blood Pb levels in the United States has resulted from coordinated, intensive efforts at the national, state and local levels. The Agency has continued to grapple with soil and dust Pb levels from the historical use of Pb in paint and gasoline and other sources. In doing so, the agency has faced the difficulty of determining the level at which to set standards for residential dust levels given the uncertainties at what environmental levels and in which specific medium may actually cause particular blood Pb levels that are

[7] It is noted that although the 95th percentile value for the 2003–2004 NHANES is not currently available, that value for 2001–2002 was 5.8 μg/dL. Also, as discussed in Section III.A.1 (including footnote 15), levels have been found to vary among children of different socioeconomic status and other demographic characteristics (CD, p. 4–21).

associated with adverse effects (66 FR 1206).[8]

EPA's research program, with other Federal agencies defines, encourages and conducts research needed to locate and assess serious risks and to develop methods and tools to characterize and help reduce risks. For example, EPA's Integrated Exposure Uptake Biokinetic Model for Lead in Children (IEUBK model) for Pb in children and the Adult Lead Methodology are widely used and accepted as tools that provide guidance in evaluating site specific data. More recently, in recognition of the need for a single model that predicts Pb concentrations in tissues for children and adults, EPA is developing the All Ages Lead Model (AALM) to provide researchers and risk assessors with a pharmacokinetic model capable of estimating blood, tissue, and bone concentrations of Pb based on estimates of exposure over the lifetime of the individual. EPA research activities on substances including Pb focus on better characterizing aspects of health and environmental effects, exposure and control or management of environmental releases (see *http://www.epa.gov/ord/researchaccomplishments/index.html*).

D. Current Lead NAAQS Review

EPA initiated the current review of the air quality criteria for Pb on November 9, 2004 with a general call for information (69 FR 64926). A project work plan (USEPA, 2005a) for the preparation of the Criteria Document was released in January 2005 for CASAC and public review. EPA held a series of workshops in August 2005, with invited recognized scientific experts to discuss initial draft materials that dealt with various lead-related issues being addressed in the Pb air quality criteria document. The first draft of the Criteria Document (USEPA, 2005b) was released for CASAC and public review in December 2005 and discussed at a CASAC meeting held on February 28–March 1, 2006.

A second draft Criteria Document (USEPA, 2006b) was released for CASAC and public review in May 2006, and discussed at the CASAC meeting on June 28, 2006. A subsequent draft of *Chapter 7—Integrative Synthesis* (Chapter 8 in the final Criteria Document), released on July 31, 2006, was discussed at an August 15, 2006 CASAC teleconference. The final Criteria Document was released on September 30, 2006 (USEPA, 2006a; cited throughout this preamble as CD). While the Criteria Document focuses on new scientific information available since the last review, it integrates that information with scientific criteria from previous reviews.

In February 2006, EPA released the *Plan for Review of the National Ambient Air Quality Standards for Lead* (USEPA 2006c) that described Agency plans and a timeline for reviewing the air quality criteria, developing human exposure and risk assessments and an ecological risk assessment, preparing a policy assessment, and developing the proposed and final rulemakings.

In May 2006, EPA released for CASAC and public review a draft *Analysis Plan for Human Health and Ecological Risk Assessment for the Review of the Lead National Ambient Air Quality Standards* (USEPA, 2006d), which was discussed at a June 29, 2006 CASAC meeting (Henderson, 2006). The May 2006 assessment plan discussed two assessment phases: a pilot phase and a full-scale phase. The pilot phase of both the human health and ecological risk assessments was presented in the draft *Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas* (ICF, 2006; henceforth referred to as the first draft Risk Assessment Report) which was released for CASAC and public review in December 2006. The first draft Staff Paper, also released in December 2006, discussed the pilot assessments and the most policy-relevant science from the Criteria Document. These documents were reviewed by CASAC and the public at a public meeting on February 6–7, 2007 (Henderson, 2007a).

Subsequent to that meeting, EPA conducted full-scale human exposure and health risk assessments, although no further work was done on the ecological assessment due to resource limitations. A second draft Risk Assessment Report (USEPA, 2007a), containing full-scale human exposure and health risk assessments, was released in July 2007 for review by CASAC at a meeting held on August 28–29, 2007. Taking into consideration CASAC comments (Henderson, 2007b) and public comments on that document, we conducted additional human exposure and health risk assessments. A final Risk Assessment Report (USEPA, 2007b) and final Staff Paper (USEPA, 2007c) were released on November 1, 2007.

The final Staff Paper presents OAQPS staff's evaluation of the policy implications of the key studies and scientific information contained in the Criteria Document and presents and interprets results from the quantitative risk/exposure analyses conducted for this review. Further, the Staff Paper presents OAQPS staff recommendations on a range of policy options for the Administrator to consider concerning whether, and if so how, to review the primary and secondary Pb NAAQS. Such an evaluation is intended to help ''bridge the gap'' between the scientific assessment contained in the Criteria Document and the judgments required of the EPA Administrator in determining whether it is appropriate to retain or revise the NAAQS for Pb. In evaluating the adequacy of the current standard and a range of policy alternatives, the Staff Paper considered the available scientific evidence and quantitative risk-based analyses, together with related limitations and uncertainties, and focused on the information that is most pertinent to evaluating the basic elements of air quality standards: Indicator,[9] averaging time, form,[10] and level. These elements, which together serve to define each standard, must be considered collectively in evaluating the health and welfare protection afforded by the Pb standards. The information, conclusions, and OAQPS staff recommendations presented in the Staff Paper were informed by comments and advice received from CASAC in its reviews of the earlier draft Staff Paper and drafts of related risk/exposure assessment reports, as well as comments on these earlier draft documents submitted by public commenters.

The schedule for completion of this review is governed by a judicial order resolving a lawsuit filed in May 2004, alleging that EPA had failed to complete the current review within the period provided by statute. *Missouri Coalition for the Environment*, v. *EPA* (No. 4:04CV00660 ERW, Sept. 14, 2005). The order that now governs this review, entered by the court on September 14, 2005, provides that EPA finalize the Staff Paper no later than November 1, 2007, which we have done. The order also specifies that EPA sign, for publication, notices of proposed and final rulemaking concerning its review of the Pb NAAQS no later than May 1, 2008 and September 1, 2008, respectively. To ensure that the ordered final rulemaking deadline will be met, EPA has set an interim target date for a proposed rulemaking of March 2008.

[8] See 2001 regulation to establish standards for lead-based paint hazards in most pre-1978 housing and child-occupied facilities (66 FR 1206).

[9] The ''indicator'' of a standard defines the chemical species or mixture that is to be measured in determining whether an area attains the standard.

[10] The ''form'' of a standard defines the air quality statistic that is to be compared to the level of the standard in determining whether an area attains the standard.

The EPA invites general, specific, and/or technical comments on all issues discussed in this ANPR, including issues related to the Agency's review of the primary and secondary Pb NAAQS (sections III and IV below) and associated monitoring considerations (section V below). EPA also invites comments on all information, findings, and recommendations presented in this notice (section VI below).

A public meeting of the CASAC will be held on December 12–13, 2007 for the purpose of providing advice and recommendations to the Administrator based on its review of this ANPR and the recently released final Staff Paper and Risk Assessment Report. Information about this meeting was published in the **Federal Register** on November 20, 2007 (72 FR 65335–65336).

E. Implementation Considerations

Currently only two areas in the United States are designated as non-attainment of the Pb NAAQS. If the Pb NAAQS is significantly lowered as a result of this review, it is likely (based on a review of the current air quality monitoring data) that many more areas would be classified as non-attainment (see section 2.3.2.5 of the Staff Paper for more details). States with Pb non-attainment areas would be required to develop ''State Implementation Plans'' that identify and implement specific air pollution control measures that would reduce the ambient Pb concentrations to below the Pb NAAQS. If the Pb NAAQS is revised to a lower level, States may be able to attain the revised NAAQS by implementing air pollution controls on lead emitting industrial sources. These controls include such measures as fabric filter particulate controls and fugitive dust controls. However, at some of the lower Pb concentration levels that have been identified for consideration in this review, it may become necessary in some areas to implement controls on nonindustrial sources such as dust from roadways, dust from construction, and/or demolition sites.

As described in further detail in the Staff Paper (see Section 2.2), Pb is emitted from a wide variety of source types. The top five categories of sources of Pb emissions included in the EPA's 2002 National Emissions Inventory (NEI) include: Mobile sources; [11] industrial, commercial, institutional and process boilers; utility boilers; iron and steel foundries; and primary Pb smelting (see Staff Paper Section 2.2).

III. The Primary Standard

This section presents information relevant to the review of the primary Pb NAAQS, including information on the health effects associated with Pb exposures, results of the human exposure and health risk assessment, and considerations related to evaluating the adequacy of the current standard and alternative standards that might be appropriate for the Administrator to consider.

A. Health Effects Information

The following summary focuses on health endpoints associated with the range of exposures considered to be most relevant to current exposure levels and makes note of several key aspects of the health evidence for Pb. First, because exposure to atmospheric Pb particles occurs not only via direct inhalation of airborne particles, but also via ingestion of deposited particles (e.g., associated with soil and dust), the exposure being assessed is multimedia and multi-pathway in nature, occurring via both the inhalation and ingestion routes. In fact, ingestion of indoor dust can be recognized as a significant Pb exposure pathway, particularly for young children, for which dust ingested via hand-to-mouth activity can be a more important source of Pb exposure than inhalation, although dust can be resuspended through household activities and pose an inhalation risk as well (CD, p. 3–27 to 3–28).[12] Some studies have found that dietary intake of Pb may be a predominant source of Pb exposure among adults, greater than consumption of water and beverages or inhalation (CD, p. 3–43).[13] Second, the exposure index or dose metric most commonly used and associated with health effects information is an internal biomarker (i.e., blood Pb). Additionally, the exposure duration of interest (i.e., that influencing internal dose pertinent to health effects of interest) may span months to potentially years, as does the time scale of the environmental processes influencing Pb deposition and fate. Lastly, the nature of the evidence for the health effects of greatest interest for this review, neurological effects in young children, are epidemiological data substantiated by toxicological data that provide biological plausibility and insights on mechanisms of action (CD, sections 5.3, 6.2 and 8.4.2).

In recognition of the multi-pathway aspects of Pb, and the use of an internal exposure metric in health risk assessment, the next section describes the internal disposition or distribution of Pb, and the use of blood Pb as an internal exposure or dose metric. This is followed by a discussion of the nature of Pb-induced health effects that emphasizes those with the strongest evidence. Potential impacts of Pb exposures on public health, including recognition of potentially susceptible or vulnerable subpopulations, are then discussed. Finally, key observations about Pb-related health effects are summarized.

1. Internal Disposition—Blood Lead as Dose Metric

The health effects of Pb are remote from the portals of entry to the body (i.e., the respiratory system and gastrointestinal tract). Consequently, the internal disposition and distribution of Pb is an integral aspect of the relationship between exposure and effect. This section briefly summarizes the current state of knowledge of Pb disposition pertaining to both inhalation and ingestion routes of exposure as described in the Criteria Document.

Inhaled Pb particles deposit in the different regions of the respiratory tract as a function of particle size (CD, pp. 4–3 to 4–4). Lead associated with smaller particles, which are predominantly deposited in the pulmonary region, may, depending on solubility, be absorbed into the general circulation or transported to the gastrointestinal tract (CD, pp. 4–3). Lead associated with larger particles, which are predominantly deposited in the head and conducting airways (e.g., nasal

[11] The emissions estimates identified as mobile sources in the current NEI are currently limited to combustion of general aviation gas in piston-engine aircraft. Lead emissions estimates for other mobile source emissions of Pb (e.g., brake wear, tire wear, and others) are not included in the current NEI.

[12] For example, the Criteria Document states the following: ''Given the large amount of time people spend indoors, exposure to Pb in dusts and indoor air can be significant. For children, dust ingested via hand-to-mouth activity is often a more important source of Pb exposure than inhalation. Dust can be resuspended through household activities, thereby posing an inhalation risk as well. House dust Pb can derive both from Pb-based paint and from other sources outside the home. The latter include Pb-contaminated airborne particles from currently operating industrial facilities or resuspended soil particles contaminated by deposition of airborne Pb from past emissions.'' (CD, p. E–6)

[13] Some recent exposure studies have evaluated the relative importance of diet to other routes of Pb exposure. In reports from the NHEXAS, Pb concentrations measured in households throughout the Midwest were significantly higher in solid food compared to beverages and tap water (Clayton *et al.*, 1999; Thomas *et al.*, 1999). However, beverages appeared to be the dominant dietary pathway for Pb according to the statistical analysis (Clayton *et al.*, 1999), possibly indicating greater bodily absorption of Pb from liquid sources (Thomas *et al.*, 1999). Dietary intakes of Pb were greater than those calculated for intake from home tap water or inhalation on a μg/day basis (Thomas *et al.*, 1999). The NHEXAS study in Arizona showed that, for adults, ingestion was a more important Pb exposure route than inhalation (O'Rourke *et al.*, 1999). (CD, p. 3–43)

pharyngeal and tracheobronchial regions of respiratory tract), may be transported into the esophagus and swallowed, thus making its way to the gastrointestinal tract (CD, pp. 4–3 to 4–4), where it may be absorbed into the blood stream. Thus, Pb can reach the gastrointestinal tract either directly through the ingestion route or indirectly following inhalation.

Once in the blood stream, where approximately 99% of the Pb associates with red blood cells, the Pb is quickly distributed throughout the body (e.g., within days) with the bone serving as a large, long-term storage compartment, and soft tissues (e.g., kidney, liver, brain, etc) serving as smaller compartments, in which Pb may be more mobile (CD, sections 4.3.1.4 and 8.3.1.). Additionally, the epidemiologic evidence indicates that Pb freely crosses the placenta resulting in continued fetal exposure throughout pregnancy, and that exposure increases during the later half of pregnancy (CD, section 6.6.2).

During childhood development, bone represents approximately 70% of a child's body burden of Pb, and this accumulation continues through adulthood, when more than 90% of the total Pb body burden is stored in the bone (CD, section 4.2.2). Accordingly, levels of Pb in bone are indicative of a person's long-term, cumulative exposure to Pb. In contrast, blood Pb levels are usually indicative of recent exposures. Depending on exposure dynamics, however, blood Pb may—through its interaction with bone—be indicative of past exposure or of cumulative body burden (CD, section 4.3.1.5).

Throughout life, Pb in the body is exchanged between blood and bone, and between blood and soft tissues (CD, section 4.3.2), with variation in these exchanges reflecting ''duration and intensity of the exposure, age and various physiological variables'' (CD, p. 4–1). Past exposures that contribute Pb to the bone, consequently, may influence current levels of Pb in blood. Where past exposures were elevated in comparison to recent exposures, this influence may complicate interpretations with regard to recent exposure (CD, sections 4.3.1.4 to 4.3.1.6). That is, higher blood Pb concentrations may be indicative of higher cumulative exposures or of a recent elevation in exposure (CD, pp. 4–34 and 4–133).

In several recent studies investigating the relationship between Pb exposure and blood Pb in children (e.g., Lanphear and Roghmann 1997; Lanphear et al., 1998), blood Pb levels have been shown to reflect Pb exposures, with particular influence associated with exposures to Pb in surface dust. Further, as stated in the Criteria Document ''these and other studies of populations near active sources of air emissions (e.g., smelters, etc.), substantiate the effect of airborne Pb and resuspended soil Pb on interior dust and blood Pb'' (CD, p. 8–22).

Blood Pb levels are extensively used as an index or biomarker of exposure by national and international health agencies, as well as in epidemiological (CD, sections 4.3.1.3 and 8.3.2) and toxicological studies of Pb health effects and dose-response relationships (CD, Chapter 5). The prevalence of the use of blood Pb as an exposure index or biomarker is related to both the ease of blood sample collection (CD, p. 4–19; Section 4.3.1) and by findings of association with a variety of health effects (CD, Section 8.3.2). For example, the U.S. Centers for Disease Control and Prevention (CDC), and its predecessor agencies, have for many years used blood Pb level as a metric for identifying children at risk of adverse health effects and for specifying particular public health recommendations (CDC, 1991; CDC, 2005a). In 1978, when the current Pb NAAQS was established, the CDC recognized a blood Pb level of 30 μg/dL as a level warranting individual intervention (CDC, 1991). In 1985, the CDC recognized a level of 25 μg/dL for individual child intervention, and in 1991, they recognized a level of 15 μg/dL for individual intervention and a level of 10 μg/dL for implementing community-wide prevention activities (CDC, 1991; CDC, 2005). In 2005, with consideration of a review of the evidence by their advisory committee, CDC revised their statement on Preventing Lead Poisoning in Young Children, specifically recognizing the evidence of adverse health effects in children with blood Pb levels below 10 μg/dL and the data demonstrating that no ''safe'' threshold for blood Pb had been identified, and emphasizing the importance of preventative measures (CDC, 2005a, ACCLPP, 2007).[14]

Since 1976, the CDC has been monitoring blood Pb levels nationally through the National Health and Nutrition Examination Survey (NHANES). This survey has documented the dramatic decline in mean blood Pb levels in the U.S. population that has occurred since the 1970s and that coincides with regulations regarding leaded fuels, leaded paint, and Pb-containing plumbing materials that have reduced Pb exposure among the general population (CD, Sections 4.3.1.3 and 8.3.3; Schwemberger et al., 2005). The Criteria Document summarizes related information as follows (CD, p. E–6).

> In the United States, decreases in mobile sources of Pb, resulting from the phasedown of Pb additives created a 98% decline in emissions from 1970 to 2003. NHANES data show a consequent parallel decline in blood-Pb levels in children aged 1 to 5 years from a geometric mean of ~15 μg/dL in 1976–1980 to 1–2 μg/dL in the 2000–2004 period.

While levels in the U.S. general population, including geometric mean levels in children aged 1–5, have declined significantly, mean levels have been found to vary among children of different socioeconomic status (SES) and other demographic characteristics (CD, p. 4–21).[15]

Bone measurements, as a result of the generally slower Pb turnover in bone, are recognized as providing a better measure of cumulative Pb exposure (CD, Section 8.3.2). The bone pool of Pb in children, however, is thought to be much more labile than that in adults due to the more rapid turnover of bone mineral as a result of growth (CD, p. 4–27). As a result, changes in blood Pb concentration in children more closely parallel changes in total body burden (CD, pp. 4–20 and 4–27). This is in contrast to adults, whose bone has accumulated decades of Pb exposures (with past exposures often greater than current ones), and for whom the bone may be a significant source long after exposure has ended (CD, Section 4.3.2.5).

[14] With the 2005 statement, CDC identified a variety of reasons, reflecting both scientific and practical considerations, for not lowering the 1991 level of concern, including a lack of effective clinical or public health interventions to reliably and consistently reduce blood Pb levels that are already below 10 μg/dL, the lack of a demonstrated threshold for adverse effects, and concerns for deflecting resources from children with higher blood Pb levels (CDC, 2005a). CDC's Advisory Committee on Childhood Lead Poisoning Prevention recently provided recommendations regarding interpreting and managing blood Pb levels below 10 μg/dL in children and reducing childhood exposures to Pb (ACCLPP, 2007).

[15] For example, while the 2001–2004 median blood level for children aged 1–5 of all races and ethnic groups is 1.6 μg/dL, the median for the subset living below the poverty level is 2.3 μg/dL and 90th percentile values for these two groups are 4.0 μg/dL and 5.4 μg/dL, respectively. Similarly, the 2001–2004 median blood level for black, non-hispanic children aged 1–5 is 2.5 μg/dL, while the median level for the subset of that group living below the poverty level is 2.9 μg/dL and the median level for the subset living in a household with income more than 200% of the poverty level is 1.9 μg/dL. Associated 90th percentile values for 2001–2004 are 6.4 μg/dL (for black, non-hispanic children aged 1–5), 7.7 μg/dL (for the subset of that group living below the poverty level) and 4.1 μg/dL (for the subset living in a household with income more than 200% of the poverty level). (*http://www.epa.gov/envirohealth/children/body_burdens/b1-table.htm*—then click on ''Download a universal spreadsheet file of the Body Burdens data tables'').

Accordingly, blood Pb level in children is the index of exposure or exposure metric in the risk assessment discussed below in section III.B. The use of concentration-response functions that rely on blood Pb (e.g., rather than ambient Pb concentration) as the exposure metric reduces uncertainty in the causality aspects of Pb risk estimates. The relationship between specific sources and pathways of exposure and blood Pb level is needed, however, in order to identify the specific risk contributions associated with those sources and pathways of greatest interest to this assessment (i.e., those related to Pb emitted into the air). For example, the blood Pb-response relationships developed in epidemiological studies of Pb exposed populations do not distinguish among different sources or pathways of Pb exposure (e.g., inhalation, ingestion of indoor dust, ingestion of dust containing leaded paint). In the exposure assessment for this review, models that estimate blood Pb levels associated with Pb exposure (e.g., CD, Section 4.4) are used to inform estimates of contributions to blood Pb arising from ambient air related Pb as compared to contributions from other sources.

2. Nature of Effects

Lead has been demonstrated to exert ''a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action'' (CD, p. 8–24 and Section 8.4.1). This array of health effects includes heme biosynthesis and related functions; neurological development and function; reproduction and physical development; kidney function; cardiovascular function; and immune function. The weight of evidence varies across this array of effects and is comprehensively described in the Criteria Document. There is also some evidence of Pb carcinogenicity, primarily from animal studies, together with limited human evidence of suggestive associations (CD, Sections 5.6.2, 6.7, and 8.4.10).[16]

This review is focused on those effects most pertinent to ambient exposures, which given the reductions in ambient Pb levels over the past 30 years, are generally those associated with blood Pb levels in children and adults in the range of 10 μg/dL and lower. Tables 8–5 and 8–6 in the Criteria Document highlight the key such effects observed in children and adults, respectively (CD, pp. 8–60 to 8–62). The effects include neurological, hematological and immune effects for children, and hematological, cardiovascular and renal effects for adults. As evident from the discussions in Chapters 5, 6 and 8 of the Criteria Document, ''neurotoxic effects in children and cardiovascular effects in adults are among those best substantiated as occurring at blood Pb concentrations as low as 5 to 10 μg/dL (or possibly lower); and these categories are currently clearly of greatest public health concern'' (CD, p. 8–60). The toxicological and epidemiological information available since the time of the last review ''includes assessment of new evidence substantiating risks of deleterious effects on certain health endpoints being induced by distinctly lower than previously demonstrated Pb exposures indexed by blood Pb levels extending well below 10 μg/dL in children and/or adults'' (CD, p. 8–25). Some health effects associated with blood Pb levels extend below 5 μg/dL, and some studies have observed these effects at the lowest blood levels considered. Threshold levels for these effects cannot be discerned from the currently available studies. For example, the Criteria Document also states the following (CD, p. 6–269).

> Recent studies of Pb neurotoxicity in children consistently indicate that blood Pb levels <10 μg/dL are associated with neurocognitive deficits. The data are also suggestive that these effects may be seen at blood Pb levels ranging down to 5 μg/dL, or perhaps somewhat lower, but the evidence is less definitive.[17]

Since effects on children's developing nervous system are considered to be the sentinel effects in this review, and are the focus of the quantitative risk assessment conducted for this review (discussed below in section III.B), these effects are discussed briefly below. Other neurological effects associated with Pb exposures indexed by blood Pb levels near or below 10 μg/dL include behavioral effects, such as delinquent behavior (CD, Sections 6.2.6 and 8.4.2.2), sensory effects, such as those related to hearing and vision (CD, Sections 6.2.7, 7.4.2.3 and 8.4.2.3), and deficits in neuromotor function (CD, p. 8–36). The differing evidence and associated strength of the evidence for these different effects is described in detail in the Criteria Document.

The nervous system has long been recognized as a target of Pb toxicity, with the developing nervous system affected at lower exposures than the mature system (CD, Sections 5.3, 6.2.1, 6.2.2, and 8.4). While blood Pb levels in U.S. children ages one to five years have decreased notably since the late 1970s, newer studies have investigated and reported associations of effects on the neurodevelopment of children with these more recent blood Pb levels (CD, Chapter 6). Functional manifestations of Pb neurotoxicity during childhood include sensory, motor, cognitive and behavioral impacts. Numerous epidemiological studies have reported neurocognitive, neurobehavioral, sensory, and motor function effects in children at blood Pb levels below 10 μg/dL (CD, Section 6.2). As discussed in the Criteria Document, ''extensive experimental laboratory animal evidence has been generated that (a) substantiates well the plausibility of the epidemiologic findings observed in human children and adults and (b) expands our understanding of likely mechanisms underlying the neurotoxic effects'' (CD, p. 8–25; Section 5.3).

Cognitive effects associated with Pb exposures that have been observed in epidemiological studies have included decrements in intelligence test results, such as the widely used IQ score, and in academic achievement as assessed by various standardized tests as well as by class ranking and graduation rates (CD, Section 6.2.16 and pp. 8–29 to 8–30). As noted in the Criteria Document with regard to the latter, ''Associations between Pb exposure and academic achievement observed in the above-noted studies were significant even after adjusting for IQ, suggesting that Pb-sensitive neuropsychological processing and learning factors not reflected by global intelligence indices might contribute to reduced performance on academic tasks'' (CD, pp. 8–29 to 8–30).

Other cognitive effects observed in studies of children have included effects on attention, executive functions, language, memory, learning and visuospatial processing (CD, Sections 5.3.5, 6.2.5 and 8.4.2.1), with attention and executive function effects associated with Pb exposures indexed by blood Pb levels below 10 μg/dL (CD, Section 6.2.5 and pp. 8–30 to 8–31). The evidence for the role of Pb in this suite of effects includes experimental animal findings (discussed in CD, Section 8.4.2.1; p. 8–31), which provide strong biological plausibility of Pb effects on learning ability, memory and attention

[16] Lead has been classified as a probable human carcinogen by the International Agency for Research on Cancer, based mainly on sufficient animal evidence, and as reasonably anticipated to be a human carcinogen by the U.S. National Toxicology Program (CD, Section 6.7.2). U.S. EPA considers Pb a probable carcinogen (*http://www.epa.gov/iris/subst/0277.htm;* CD, p. 6–195).

[17] The Criteria Document further states ''Collectively, the prospective cohort and cross-sectional studies offer evidence that exposure to Pb affects the intellectual attainment of preschool and school age children at blood Pb levels <10 μg/dL (most clearly in the 5 to 10 μg/dL range, but, less definitively, possibly lower).'' (p. 6–269)

(CD, Section 5.3.5), as well as associated mechanistic findings. With regard to persistence of effects the Criteria Document states the following (CD, p. 8–67):

> Persistence or apparent ''irreversibility'' of effects can result from two different scenarios: (1) Organic damage has occurred without adequate repair or compensatory offsets, or (2) exposure somehow persists. As Pb exposure can also derive from endogenous sources (e.g., bone), a performance deficit that remains detectable after external exposure has ended, rather than indicating irreversibility, could reflect ongoing toxicity due to Pb remaining at the critical target organ or Pb deposited at the organ post-exposure as the result of redistribution of Pb among body pools.
>
> The persistence of effect appears to depend on the duration of exposure as well as other factors that may affect an individual's ability to recover from an insult. The likelihood of reversibility also seems to be related, at least for the adverse effects observed in certain organ systems, to both the age-at-exposure and the age-at-assessment.

The evidence with regard to persistence of Pb-induced deficits observed in animal and epidemiological studies is described in discussion of those studies in the Criteria Document (CD, Sections 5.3.5, 6.2.11, and 8.5.2). It is additionally important to note that there may be long-term consequences of such deficits over a lifetime. Poor academic skills and achievement can have ''enduring and important effects on objective parameters of success in real life,'' as well as increased risk of antisocial and delinquent behavior (CD, Section 6.2.16).

As discussed in the Criteria Document, while there is no direct animal test parallel to human IQ tests, ''in animals a wide variety of tests that assess attention, learning, and memory suggest that Pb exposure {of animals} results in a global deficit in functioning, just as it is indicated by decrements in IQ scores in children'' (CD, p. 8–27). The animal and epidemiological evidence for this endpoint are consistent and complementary (CD, p. 8–44). As stated in the Criteria Document (p. 8–44):

> Findings from numerous experimental studies of rats and of nonhuman primates, as discussed in Chapter 5, parallel the observed human neurocognitive deficits and the processes responsible for them. Learning and other higher order cognitive processes show the greatest similarities in Pb-induced deficits between humans and experimental animals. Deficits in cognition are due to the combined and overlapping effects of Pb-induced perseveration, inability to inhibit responding, inability to adapt to changing behavioral requirements, aversion to delays, and distractibility. Higher level neurocognitive functions are affected in both animals and humans at very low exposure levels (<10 μg/dL), more so than simple cognitive functions.

Epidemiologic studies of Pb and child development have demonstrated inverse associations between blood Pb concentrations and children's IQ and other outcomes at successively lower Pb exposure levels over the past 30 years (CD, p. 6–64). This is supported by multiple studies performed over the past 15 years (see CD, Section 6.2.13); ''the most compelling evidence for effects at blood Pb levels <10 μg/dL comes from an international pooled analysis of seven prospective cohort studies (n = 1,333) by Lanphear et al. (2005)'' (CD, p. 6–67 and sections 6.2.13 and 6.2.3.1.11). This pooled analysis estimated a decline of 6.2 points in full scale IQ (with a 95% confidence interval bounded by 3.8 and 8.6) occurring between approximately 1 and 10 μg/dL blood Pb level, measured concurrent with the IQ test (CD, p. 6–76). As discussed below in section III.B, this analysis (Lanphear et al., 2005) was relied upon in the quantitative risk assessment.

3. Lead-Related Impacts on Public Health

In addition to the advances in our knowledge and understanding of Pb health effects at lower exposures (e.g., using blood Pb as the index), there has been some change with regard to the U.S. population Pb burden since the time of the last Pb NAAQS review. For example, the geometric mean blood Pb level for U.S. children aged 1–5, as estimated by the U.S. Centers for Disease Control, declined from 2.7 μg/dL (95% CI: 2.5–3.0) in the 1991–1994 survey period to 1.7 μg/dL (95% CI: 1.55–1.87) in the 2001–2002 survey period (CD, Section 4.3.1.3).[18] Blood Pb levels have also declined in the U.S. adult population over this time period (CD, Section 4.3.1.3).[19] As noted in the Criteria Document, ''blood-Pb levels have been declining at differential rates for various general subpopulations, as a function of income, race, and certain other demographic indicators such as age of housing'' (CD, p. 8–21).

a. At-Risk Subpopulations

Potentially at-risk subpopulations include those with increased susceptibility (i.e., physiological factors contributing to a greater response for the same exposure) and those with increased exposure (including that resulting from behavior leading to increased contact with contaminated media) (USEPA 1986a, p. 1–154). A behavioral factor of great impact on Pb exposure is the incidence of hand-to-mouth activity that is prevalent in very young children (CD, Section 4.4.3). Physiological factors include both conditions contributing to a subgroup's increased risk of effects at a given blood Pb level, and those that contribute to blood Pb levels higher than those otherwise associated with a given Pb exposure (CD, Section 8.5.3). We also considered evidence pertaining to vulnerability to pollution-related effects which additionally encompasses situations of elevated exposure, such as residing in old housing with Pb-containing paint or near sources of ambient Pb, as well as socioeconomic factors, such as reduced access to health care or low socioeconomic status (SES) (USEPA, 2003, 2005c) that can contribute to increased risk of adverse health effects from Pb.

Three particular physiological factors contributing to increased risk of Pb effects at a given blood Pb level are recognized in the Criteria Document (e.g., CD, Section 8.5.3): Age, health status, and genetic composition. With regard to age, the susceptibility of young children to the neurodevelopmental effects of Pb is well recognized (e.g., CD, Sections 5.3, 6.2, 8.4, 8.5, 8.6.2), although the specific ages of vulnerability have not been established (CD, pp. 6–60 to 6–64). Early childhood may also be a time of increased susceptibility for Pb immunotoxicity (CD, Sections 5.9.10, 6.8.3 and 8.4.6). Further early life exposures have been associated with increased risk of cardiovascular effects in humans later in life (CD, p. 8–74). Early life exposures have also been associated with increased risk, in animals, of neurodegenerative effects later in life (CD, p. 8–74).[20] Health status is another

[18] These levels are in contrast to the geometric mean blood Pb level of 14.9 μg/dL reported for U.S. children (aged 6 months to 5 years) in 1976–1980 (CD, Section 4.3.1.3). Median and 90th percentile values have also declined from 15 μg/dL and 25 μg/dL, respectively, in 1976–1980, to 1.6 μg/dL and 3.9 μg/dL, respectively in 2003–04 (*http://www.epa.gov/envirohealth/children/body_burdens/b1-table.htm*).

[19] For example, NHANES data for older adults (60 years of age and older) indicate a decline in overall population geometric mean blood Pb level from 3.4 μg/dL in 1991–1994 to 2.2 μg/dL in 1999–2002; the trend for adults between 20 and 60 years of age is similar to that for children 1 to 5 years of age (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5420a5.htm).*

[20] Specifically, among young adults who lived as children in an area heavily polluted by a smelter and whose current Pb exposure was low, higher bone Pb levels were associated with higher systolic and diastolic blood pressure (CD, p. 8–74). In adult rats, greater early exposures to Pb are associated with increased levels of amyloid protein precursor, a marker of risk for neurodegenerative disease (CD, p. 8–74).

physiological factor in that subpopulations with pre-existing health conditions may be more susceptible (as compared to the general population) for particular Pb-associated effects, with this being most clear for renal and cardiovascular outcomes. For example, African Americans as a group, have a higher frequency of hypertension than the general population or other ethnic groups (NCHS, 2005), and as a result may face a greater risk of adverse health impact from Pb-associated cardiovascular effects. A third physiological factor relates to genetic polymorphisms. That is, subpopulations defined by particular genetic polymorphisms (e.g., presence of the δ-aminolevulinic acid dehydratase-2 [ALAD–2] allele) have also been recognized as sensitive to Pb toxicity, which may be due to increased susceptibility to the same internal dose and/or to increased internal dose associated with same exposure (CD, p. 8–71, Sections 6.3.5, 6.4.7.3 and 6.3.6).

While early childhood is recognized as a time of increased susceptibility, a difficulty in identifying a discrete period of susceptibility from epidemiological studies has been that the period of peak exposure, reflected in peak blood Pb levels, is around 18–27 months when hand-to-mouth activity is at its maximal (CD, p. 6–60). The earlier Pb literature described the first 3 years of life as a critical window of vulnerability to the neurodevelopmental impacts of Pb (CD, p. 6–60). Recent epidemiologic studies, however, have indicated a potential for susceptibility of children to concurrent Pb exposure extending to school age (CD, pp. 6–60 to 6–64). The evidence indicates both the sensitivity of the first 3 years of life, and a sustained sensitivity throughout the lifespan as the human central nervous system continues to mature and be vulnerable to neurotoxicants (CD, Section 8.4.2.7). The animal evidence helps inform an understanding of specific periods of development with increased vulnerability to specific types of effect (CD, Section 5.3), and indicates the potential importance of exposures of duration on the order of months. Evidence of a differing sensitivity of the immune system to Pb across and within different periods of life stages indicates the potential importance of exposures of duration as short as weeks to months. For example, the animal studies suggest that the gestation period is the most sensitive life stage followed by early neonatal stage, and that within these life stages, critical windows of vulnerability are likely to exist (CD, Section 5.9 and p. 5–245).

In summary, there are a variety of ways in which Pb exposed populations might be characterized and stratified for consideration of public health impacts. Age or lifestage was used to distinguish potential groups on which to focus the quantitative risk assessment because of its influence on exposure and susceptibility. Young children were selected as the priority population for the risk assessment in consideration of the health effects evidence regarding endpoints of greatest public health concern. The Criteria Document recognizes, however, other population subgroups as described above may also be at risk of Pb-related health effects of public health concern.

b. Potential Public Health Impacts

As discussed in the Criteria Document, there are potential public health implications of low-level Pb exposure, indexed by blood Pb levels, associated with several health endpoints identified in the Criteria Document (CD, Section 8.6).[21] These include potential impacts on population IQ, which is the focus of the quantitative risk assessment conducted for this review, as well as heart disease and chronic kidney disease, which are not included in the quantitative risk assessment (CD, Sections 8.6, 8.6.2, 8.6.3 and 8.6.4). It is noted that there is greater uncertainty associated with effects at the lower levels of blood Pb, and that there are differing weights of evidence across the effects observed.[22] With regard to potential implications of Pb effects on IQ, the Criteria Document recognizes the ''critical'' distinction between population and individual risk, noting that a ''point estimate indicating a modest mean change on a health index at the individual level can have substantial implications at the population level'' (CD, p. 8–77).[23] A downward shift in the mean IQ value is associated with both substantial decreases in percentages achieving very high scores and substantial increases in the percentage of individuals achieving very low scores (CD, p. 8–81).[24] For an individual functioning in the low IQ range due to the influence of developmental risk factors other than Pb, a Pb-associated IQ decline of several points might be sufficient to drop that individual into the range associated with increased risk of educational, vocational, and social handicap (CD, p. 8–77).

The magnitude of a public health impact is dependent upon the size of population affected and type or severity of the effect. As summarized above, there are several population groups that may be susceptible or vulnerable to effects associated with exposure to Pb, including young children, particularly those in families of low SES (CD, p. E–15), as well as individuals with hypertension, diabetes, and chronic renal insufficiency (CD, p. 8–72). Although comprehensive estimates of the size of these groups residing in proximity to policy-relevant sources of ambient Pb have not been developed, total estimates of these population subpopulations within the U.S. are substantial (as noted in Table 3–3 of the Staff Paper).[25]

With regard to estimates of the size of potentially vulnerable subpopulations living in areas of increased exposure related to ambient Pb, the information is still more limited. The limited information available on air and surface soil concentrations of Pb indicates elevated concentrations near stationary sources as compared with areas remote from such sources (CD, Sections 3.2.2 and 3.8). Air quality analyses (presented in Chapter 2 of the Staff Paper) indicate dramatically higher Pb concentrations at monitors near sources as compared with those more remote. As described in Section 2.3.2.1 of the Staff Paper, however, since the 1980s the number of Pb monitors has been significantly reduced by states (with EPA guidance that monitorings well below the current NAAQS could be shut down) and a lack of monitors near some large sources may lead to underestimates of the extent of occurrences of relatively higher Pb concentrations. The significant limitations of our monitoring and emissions information constrain our efforts to characterize the size of at-risk populations in areas influenced by

[21] The differing evidence and associated strength of the evidence for these different effects is described in detail in the Criteria Document.

[22] As is described in Section III.B.2.a, CASAC, in their comments on the analysis plan for the risk assessment described in this notice, placed higher priority on modeling the child IQ metric than the adult endpoints (e.g., cardiovascular effects).

[23] Similarly, ''although an increase of a few mmHg in blood pressure might not be of concern for an individual's well-being, the same increase in the population mean might be associated with substantial increases in the percentages of individuals with values that are sufficiently extreme that they exceed the criteria used to diagnose hypertension'' (CD, p. 8–77).

[24] For example, for a population mean IQ of 100 (and standard deviation of 15), 2.3% of the population would score above 130, but a shift of the population to a mean of 95 results in only 0.99% of the population scoring above 130 (CD, pp. 8–81 to 8–82).

[25] For example, approximately 4.8 million children live in poverty, while the estimates of numbers of adults with hypertension, diabetes or chronic kidney disease are on the order of 20 to 50 million (see Table 3–3 of Staff Paper).

policy-relevant sources of ambient Pb. For example, the limited size and spatial coverage of the current Pb monitoring network constrains our ability to characterize current levels of airborne Pb in the U.S. Further, the available information on emissions and locations of sources indicates that the network is inconsistent in its coverage of the largest sources identified in the 2002 National Emissions Inventory (NEI), with monitors within a mile of only 2 of 26 facilities in the 2002 NEI with emissions greater than 5 tons per year (tpy). Additionally, there are various uncertainties and limitations associated with source information in the NEI.

In recognition of the significant limitations associated with the currently available information on Pb emissions and airborne concentrations in the U.S. and the associated exposure of potentially at-risk populations, Chapter 2 of the Staff Paper summarizes the information in several different ways. For example, analyses of the current monitoring network indicated the numbers of monitoring sites that would exceed alternate standard levels, taking into consideration different statistical forms. These analyses are also summarized with regard to population size in counties home to those monitoring sites (see Appendix 5.A of the Staff Paper). Information for the monitors and from the NEI indicates a range of source sizes in proximity to monitors at which various levels of Pb are reported. Together this information suggests that there is variety in the magnitude of Pb emissions from sources that could influence air Pb concentrations. Identifying specific emissions levels of sources expected to result in air Pb concentrations of interest, however, would be informed by a comprehensive analysis using detailed source characterization information that was not feasible within the time and data constraints of this review. Instead, we have developed a summary of the emissions and demographic information for Pb sources that includes estimates of the numbers of people residing in counties in which the aggregate Pb emissions from NEI sources is greater than or equal to 0.1 tpy or in counties in which the aggregate Pb emissions is greater than or equal to 0.1 tpy per 1000 square miles (see Tables 3–4 and 3–5, respectively, in the Staff Paper).

Additionally, the potential for historically deposited Pb near roadways to contribute to increased risks of Pb exposure and associated risk to populations residing nearby is suggested in the Criteria Document. Although estimates of the number of individuals, including children, living within close proximity to roadways specifically recognized for this potential have not been developed, these numbers may be substantial. [26]

4. Key Observations

The following key observations are based on the available health effects evidence and the evaluation and interpretation of that evidence in the Criteria Document.

- Lead exposures occur both by inhalation and by ingestion (CD, Chapter 3). As stated in the Criteria Document, ''given the large amount of time people spend indoors, exposure to Pb in dusts and indoor air can be significant'' (CD, p. 3–27).
- Children, in general and especially low SES children, are at increased risk for Pb exposure and Pb-induced adverse health effects. This is due to several factors, including enhanced exposure to Pb via ingestion of soil Pb and/or dust Pb due to normal childhood hand-to-mouth activity (CD, p. E–15, Chapter 3 and Section 6.2.1).
- Once inhaled or ingested, Pb is distributed by the blood, with long-term storage accumulation in the bone. Bone Pb levels provide a strong measure of cumulative exposure which has been associated with many of the effects summarized below, although difficulty of sample collection has precluded widespread use in epidemiological studies to date (CD, Chapter 4).
- Blood levels of Pb are well accepted as an index of exposure (or exposure metric) for which associations with the key effects (see below) have been observed. In general, associations with blood Pb are most robust for those effects for which past exposure history poses less of a complicating factor, i.e., for effects during childhood (CD, Section 4.3).
- Both epidemiological and toxicologic studies have shown that environmentally relevant levels of Pb affect many different organ systems (CD, p. E–8). Many associations of health effects with Pb exposure have been found at levels of blood Pb that are currently relevant for the U.S. population, with children having blood Pb levels of 5–10 μg/dL, or, perhaps somewhat lower, being at notable risk for neurological effects (see subsequent bullet). Supportive evidence from toxicological studies provides biological plausibility for the observed effects. (CD, Chapters 5, 6 and 8)
- Pb exposure is associated with a variety of neurological effects in children, notably intellectual attainment and school performance. Both qualitative and quantitative evidence, with further support from animal research, indicates a robust and consistent effect of Pb exposure on neurocognitive ability at mean concurrent blood Pb levels in the range of 5 to 10 μg/dL. A recent analysis of a nationally representative U.S. sample suggested Pb effects on intellectual attainment of young children at population mean concurrent blood Pb levels ranging down to as low as 2 μg/dL. (CD, Sections 5.3, 6.2, 8.4.2 and 6.10)
- Deficits in cognitive skills may have long-term consequences over a lifetime. Poor academic skills and achievement can have enduring and important effects on objective parameters of success in real life as well as increased risk of antisocial and delinquent behavior. (CD, Sections 6.1 and 8.4.2)
- For the quantitative risk assessment for neurocognitive ability in young children (described in Chapter 4 of the Staff Paper), the Staff Paper chose to use nonlinear concentration-response models that reflect the epidemiological evidence of a higher slope of the blood Pb concentration-response relationship at lower blood Pb levels, particularly below 10 μg/dL (CD, Sections 6.2.13 and 8.6).
- At mean blood Pb levels, in children, on the order of 10 μg/dL, and somewhat lower, associations have been found with effects to the immune system, including altered macrophage activation, increased IgE levels and associated increased risk for autoimmunity and asthma (CD, Sections 5.9, 6.8, and 8.4.6).
- In adults, with regard to cardiovascular outcomes, the Criteria Document included the following summary (CD, p. E–10).

Epidemiological studies have consistently demonstrated associations between Pb exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. [27] A meta-analysis of

[26] For example, the 2005 American Housing Survey, conducted by the U.S. Census Bureau indicates that some 14 million (or approximately 13% of) housing units are ''within 300 feet of a 4-or-more-lane roadway, railroad or airport'' (U.S. Census Bureau, 2006). Additionally, estimates developed for Colorado, Georgia and New York indicate that approximately 15–30% of the populations in those states reside within 75 meters of a major roadway (i.e., a ''Limited Access Highway'', ''Highway'', ''Major Road'' or ''Ramp'', as defined by the U.S. Census Feature Class Codes) (ICF, 2005).

[27] The Criteria Document states that ''While several studies have demonstrated a positive correlation between blood pressure and blood Pb concentration, others have failed to show such association when controlling for confounding

Continued

numerous studies estimates that a doubling of blood-Pb level (e.g., from 5 to 10 μg/dL) is associated with ~1.0 mm Hg increase in systolic blood pressure and ~0.6 mm Hg increase in diastolic pressure. Studies have also found that cumulative past Pb exposure (e.g., bone Pb) may be as important, if not more, than present Pb exposure in assessing cardiovascular effects. The evidence for an association of Pb with cardiovascular morbidity and mortality is limited but supportive.

Studies of nationally representative U.S. samples observed associations between blood Pb levels and increased systolic blood pressure at population mean blood lead levels less than 5 μg/dL, particularly among African Americans (CD, Section 6.5.2). With regard to gender differences, the Criteria Document states the following (CD, p. 6–154).

Although females often show lower Pb coefficients than males, and Blacks higher Pb coefficients than Whites, where these differences have been formally tested, they are usually not statistically significant. The tendencies may well arise in the differential Pb exposure in these strata, lower in women than in men, higher in Blacks than in Whites. The same sex and race differential is found with blood pressure.

Animal evidence provides confirmation of Pb effects on cardiovascular functions. (CD, Sections 5.5, 6.5, 8.4.3 and 8.6.3)

- Renal effects, evidenced by reduced renal filtration, have also been associated with Pb exposures indexed by bone Pb levels and also with mean blood Pb levels in the range of 5 to 10 μg/dL in the general adult population, with the potential adverse impact of such effects being enhanced for susceptible subpopulations including those with diabetes, hypertension, and chronic renal insufficiency (CD, Sections 6.4, 8.4.5, and 8.6.4). The full significance of this effect is unclear, given that other evidence of more marked signs of renal dysfunction have not been detected at blood Pb levels below 30–40 μg/dL in large studies of occupationally-exposed Pb workers (CD, pp. 6–270 and 8–50). [28]
- Other Pb associated effects in adults occurring at or just above 10 μg/dL include hematological (e.g., impact on heme synthesis pathway) and neurological effects, with animal evidence providing support of Pb effects on these systems and evidence regarding mechanism of action. (CD, Sections 5.2, 5.3, 6.3 and 6.9.2)

B. Human Exposure and Health Risk Assessments

This section presents a brief summary of the human exposure and health risk assessments conducted by EPA for this review. The complete full-scale assessment, which includes specific analyses conducted to address CASAC comments and advice on an earlier draft assessment, is presented in the final Risk Assessment Report (USEPA, 2007b).

The focus of this Pb NAAQS risk assessment is on Pb derived from those sources emitting Pb to ambient air. The design and implementation of this assessment needed to address significant limitations and complexity that go far beyond the situation for similar assessments typically performed for other criteria pollutants. Not only was the risk assessment constrained by the timeframe allowed for this review in the context of breadth of information to address, it was also constrained by significant limitations in data and modeling tools for the assessment. Furthermore, the multimedia and persistent nature of Pb, and the role of multiple exposure pathways, add significant complexity to the assessment as compared to other assessments that focus only on the inhalation pathway.

Due to the limited data, models, and time available, the risk assessment could not fully incorporate all of the important complexities associated with Pb. Consequently, in characterizing risk associated with the ambient air-related [29] (policy-relevant) sources and exposures, simplifying assumptions were made in several areas. For example, people are also exposed to Pb that originates from nonair sources, including leaded paint or drinking water distribution systems. For this assessment, the Pb from these nonair sources is collectively referred to as ''policy-relevant background.'' [30] [31] Although deposition of airborne Pb is a major source of Pb in food (CD, p. 3–54) and may also contribute to Pb in drinking water, the contribution from air pathways to these nonair exposure pathways could not be explicitly modeled, and these contributions are treated as though they were part of the policy-relevant background. [32] This means that some benefits associated with emissions reductions are excluded to the extent that reduced air emissions will eventually mean less Pb in water and food.

An overview of the human health risk assessment completed in the last review of the Pb NAAQS in 1990 (USEPA, 1990a) is presented first below, followed

factors such as tobacco smoking, exercise, body weight, alcohol consumption, and socioeconomic status. Thus, the studies that have employed blood Pb level as an index of exposure have shown a relatively weak association with blood pressure. In contrast, the majority of the more recent studies employing bone Pb level have found a strong association between long-term Pb exposure and arterial pressure (Chapter 6). Since the residence time of Pb in the blood is relatively short but very long in the bone, the latter observations have provided rather compelling evidence for a positive relationship between Pb exposure and a subsequent rise in arterial pressure'' (CD, pp. 5–102 to 5–103). Further, in consideration of the meta-analysis also described here, the Criteria Document stated that ''The meta-analysis provides strong evidence for an association between increased blood Pb and increased blood pressure over a wide range of populations'' (CD, p. 6–130) and ''the meta-analyses results suggest that studies not detecting an effect may be due to small sample sizes or other factors affecting precision of estimation of the exposure effect relationship'' (CD, p. 6–133).

[28] In the general population, both cumulative and circulating Pb has been found to be associated with longitudinal decline in renal functions. In the large NHANES III study, alterations in urinary creatinine excretion rate (one indicator of possible renal dysfunction) was observed in hypertensives at a mean blood Pb of only 4.2 μg/dL. These results provide suggestive evidence that the kidney may well be a target organ for effects from Pb in adults at current U.S. environmental exposure levels. The magnitude of the effect of Pb on renal function ranged from 0.2 to −1.8 mL/min change in creatinine clearance per 1.0 μg/dL increase in blood Pb in general population studies. However, the full significance of this effect is unclear, given that other evidence of more marked signs of renal dysfunction have not been detected at blood Pb levels below 30–40 μg/dL among thousands of occupationally-exposed Pb workers that have been studied. (CD, p. 6–270)

[29] Ambient air related sources are those emitting Pb into the ambient air (including resuspension of previously emitted Pb, that may include Pb paint from older buildings which has weathered and impacted outdoor soil with subsequent resuspension), and ambient air related exposures include inhalation of ambient air Pb as well as ingestion of Pb deposited out of the air (e.g., onto outdoor soil/dust or indoor dust).

[30] This categorization of policy-relevant sources and background exposures is not intended to convey any particular policy decision at this stage regarding the Pb standard. Rather, it is simply intended to define the focus of this analysis.

[31] In the context of NAAQS for other criteria pollutants which are not multimedia in nature, such as ozone, the term policy-relevant background is used to distinguish anthropogenic air emissions from naturally occurring non-anthropogenic emissions to separate pollution levels that can be controlled by U.S. regulations from levels that are generally uncontrollable by the United States (USEPA, 2007d). In the case of Pb, however, due to the multimedia, multipathway nature of human exposures to Pb, policy-relevant background is defined more broadly to include not only the ''quite low'' levels of naturally occurring Pb emissions into the air from non-anthropogenic sources such as volcanoes, sea salt, and windborne soil particles from areas free of anthropogenic activity, but also Pb from nonair sources, generally including leaded paint or drinking water distribution systems, which are collectively referred to in the risk assessment described here as ''policy-relevant background'' (USEPA, 2007b, p. 2–28, p. 1–3).

[32] Furthermore, although Pb from indoor paint is considered a component of policy-relevant background, for this analysis, it may be reflected somewhat in estimates developed for policy-relevant sources due to modeling constraints (see USEPA, 2007b).

by a summary of key aspects of the approach used in this assessment, including key limitations and uncertainties. The key assessment results are then summarized.

1. Overview of Risk Assessment From Last Review

The risk assessment conducted in support of the last review used a case study approach to compare air quality scenarios in terms of their impact on the percentage of modeled populations that exceeded specific blood Pb levels chosen with consideration of the health effects evidence at that time (USEPA, 1990b; USEPA, 1989). The case studies in that analysis, however, focused exclusively on Pb smelters including two secondary and one primary smelter and did not consider exposures in a more general urban context. Additionally, the analysis focused on children (birth through 7 years of age) and middle-aged men. The assessment evaluated impacts of alternate NAAQS on numbers of children and men with blood Pb levels above levels of concern based on health effects evidence at that time. The primary difference between the risk assessment approach used in the current analysis and the assessment completed in 1990 involves the risk metric employed. Rather than estimating the percentage of study populations with exposures above blood Pb levels of interest as was done in the last review (i.e., 10, 12 and 15 μg/dL), the current analysis estimates changes in health risk, specifically IQ loss, associated with Pb exposure for child populations at each of the case study locations with that IQ loss further differentiated between background Pb exposure and policy-relevant exposures.

2. Design Aspects of Exposure and Risk Assessments

This section provides an overview of key elements of the assessment design, inputs, and methods, and includes identification of key uncertainties and limitations.

a. CASAC Advice

The CASAC conducted a consultation on the draft analysis plan for the risk assessment (USEPA, 2006c) in June, 2006 (Henderson, 2006). Some key comments provided by CASAC members on the plan included: (1) Placing a higher priority on modeling the child IQ metric than the adult endpoints (e.g., cardiovascular effects), (2) recognizing the importance of indoor dust loading by Pb contained in outdoor air as a factor in Pb-related exposure and risk for sources considered in this analysis, and (3) concurring with use of the IEUBK biokinetic blood Pb model. Taking these comments into account, a pilot phase assessment was conducted to test the risk assessment methodology being developed for the subsequent full-scale assessment. The pilot phase assessment is described in the first draft Staff Paper and accompanying technical report (ICF 2006), which was discussed by the CASAC Pb panel on February 6–7 (Henderson, 2007a).

Results from the pilot assessment, together with comments received from CASAC and the public, informed the design of the full-scale analysis. The full-scale analysis included a substitution of a more generalized urban case study for the location-specific near-roadway case study evaluated in the pilot. In addition, a number of changes were made in the exposure and risk assessment approaches, including the development of a new indoor dust Pb model focused specifically on urban residential locations and specification of additional IQ loss concentration-response (C–R) functions to provide greater coverage for potential impacts at lower exposure levels.

The draft full-scale assessment was presented in the July 2007 draft risk assessment report (USEPA, 2007a) that was released for public comment and provided to CASAC for review. In their review of the July draft risk assessment report, the CASAC Pb Panel made several recommendations for additional exposure and health risk analyses (Henderson, 2007b). These included a recommendation that the general urban case study be augmented by the inclusion of risk analyses in specific urban areas of the U.S. In this regard, they specifically stated the following (Henderson, 2007b, p. 3).

> * * * the CASAC strongly believes that it is important that EPA staff make estimates of exposure that will have national implications for, and relevance to, urban areas; and that, significantly, the case studies of both primary lead (Pb) smelter sites as well as secondary smelter sites, while relevant to a few atypical locations, do not meet the needs of supporting a Lead NAAQS. The Agency should also undertake case studies of several urban areas with varying lead exposure concentrations, based on the prototypic urban risk assessment that OAQPS produced in the 2nd Draft Lead Human Exposure and Health Risk Assessments. In order to estimate the magnitude of risk, the Agency should estimate exposures and convert these exposures to estimates of blood levels and IQ loss for children living in specific urban areas.

Hence, EPA included additional case studies in the risk assessment. Further, CASAC recommended using a concentration-response function with a change in slope near 7.5 μg/dL. Accordingly, EPA included such an additional concentration-response function in the risk assessment. Results from the initial full-scale analyses, along with comments from CASAC, such as those described here, and the public resulted in a final version of the full-scale assessments which is summarized in this notice and presented in greater detail in the Risk Assessment Report and associated appendices (USEPA, 2007b). While these additional analyses were developed in response to CASAC recommendations, there has not been review of the completed analyses by CASAC.

b. Health Endpoint, Risk Metric and Concentration-Response Functions

The health endpoint on which the quantitative health risk assessment focuses is developmental neurotoxicity in children, with IQ decrement as the risk metric. Among the wide variety of health endpoints associated with Pb exposures, there is general consensus that the developing nervous system in young children is the most sensitive and that neurobehavioral effects (specifically neurocognitive deficits), including IQ decrements, appear to occur at lower blood levels than previously believed (i.e., at levels <10 μg/dL). For example, the overall weight of the available evidence, described in the Criteria Document, provides clear substantiation of neurocognitive decrements being associated in young children with blood Pb levels in the range of 5 to 10 μg/dL, and some analyses indicate Pb effects on intellectual attainment of young children ranging from 2 to 8 μg/dL (CD, Sections 6.2, 8.4.2, and 8.4.2.6). That is, while blood Pb levels in U.S. children ages one to five years have decreased notably since the late 1970s, newer studies have investigated and reported associations of effects on the neurodevelopment of children with these more recent blood Pb levels (CD, Chapter 6).

The evidence for neurotoxic effects in children is a robust combination of epidemiological and toxicological evidence (CD, Sections 5.3, 6.2, and 8.5). The epidemiological evidence is supported by animal studies that substantiate the biological plausibility of the associations, and provides an understanding of mechanisms of action for the effects (CD, Section 8.4.2). The selection of children's IQ for the quantitative risk assessment reflects consideration of the evidence presented in the Criteria Document as well as advice received from CASAC (Henderson, 2006, 2007a).

The epidemiological studies that have investigated blood Pb effects on IQ (see

CD, Section 6.2.3) have considered a variety of specific blood Pb metrics, including: (1) Blood concentration ''concurrent'' with the response assessment (e.g., at the time of IQ testing), (2) average blood concentration over the ''lifetime'' of the child at the time of response assessment (e.g., average of measurements taken over child's first 6 or 7 years), (3) peak blood concentration during a particular age range, and (4) early childhood blood concentration (e.g., the mean of measurements between 6 and 24 months age). All four specific blood Pb metrics have been correlated with IQ (see CD, p. 6–62; Lanphear *et al.*, 2005). In the international pooled analysis by Lanphear and others (2005), however, the concurrent and lifetime averaged measurements were considered ''stronger predictors of lead-associated intellectual deficits than was maximal measured (peak) or early childhood blood lead concentrations,'' with the concurrent blood Pb level exhibiting the strongest relationship (CD, p. 6–29). It is not clear in this case, or for similar findings in other studies, whether the cognitive deficits observed were due to Pb exposure that occurred during early childhood or were a function of concurrent exposure. Nevertheless, concurrent blood Pb levels likely reflected both ongoing exposure and preexisting body burden (CD, p. 6–32).

Given the evidence described in detail in the Criteria Document (Chapters 6 and 8), and in consideration of CASAC recommendations (Henderson, 2006, 2007a, 2007b), the risk assessment for this review relies on the functions presented by Lanphear and others (2005) that relate absolute IQ as a function of concurrent blood Pb or of the log of concurrent blood Pb, and lifetime average blood Pb, respectively. As discussed in the Criteria Document (CD, p. 8–63 to 8–64), the slope of the concentration-response relationship described by these functions is greater at the lower blood Pb levels (e.g., less than 10 μg/dL). As discussed in the Criteria Document, threshold blood Pb levels for these effects cannot be discerned from the currently available epidemiological studies, and the evidence in the animal Pb neurotoxicity literature does not define a threshold for any of the toxic mechanisms of Pb (CD, Sections 5.3.7 and 6.2).

In applying relationships observed with the pooled analysis (Lanphear et al., 2005) to the risk assessment, which includes blood Pb levels below the range represented by the pooled analysis, several alternative blood Pb concentration-response models were considered in recognition of a reduced confidence in our ability to characterize the quantitative blood Pb concentration-response relationship at the lowest blood Pb levels represented in the recent epidemiological studies. The functions considered and employed in the initial risk analyses for this review include the following.

- Log-linear function with low-exposure linearization, for both concurrent and lifetime average blood metrics, applies the nonlinear relationship down to the blood Pb concentration representing the lower bound of blood Pb levels for that blood metric in the pooled analysis and applies the slope of the tangent at that point to blood Pb concentrations estimated in the risk assessment to fall below that level.
- Log-linear function with cutpoint, for both concurrent and lifetime average blood metrics, also applies the nonlinear relationship at blood Pb concentrations above the lower bound of blood Pb concentrations in the pooled analysis dataset for that blood metric, but then applies zero risk to all lower blood Pb concentrations estimated in the risk assessment.

In the additional risk analyses performed subsequent to the August 2007 CASAC public meeting, the two functions listed above and the following two functions were employed (see Section 5.3.1 of the Risk Assessment Report for details on the forms of these functions as applied in this risk assessment).

- Population stratified dual linear function for concurrent blood Pb, derived from the pooled dataset stratified at peak blood Pb of 10 μg/dL and
- Population stratified dual linear function for concurrent blood Pb, derived from the pooled dataset stratified at 7.5 μg/dL peak blood Pb.

In interpreting risk estimates derived using the various functions, consideration should be given to the uncertainties with regard to the precision of the coefficients used for each analysis. The coefficients for the log-linear model from Lanphear et al. (2005) had undergone a careful development process, including sensitivity analyses, using all available data from 1,333 children. The shape of the exposure-response relationship was first assessed through tests of linearity, then by evaluating the restricted cubic spline model. After determining that the log-linear model provided a good fit to the data, covariates to adjust for potential confounding were included in the log-linear model with careful consideration of the stability of the parameter estimates. After the multiple regression models were developed, regression diagnostics were employed to ascertain whether the Pb coefficients were affected by collinearity or influential observations. To further investigate the stability of the model, a random-effects model (with sites random) was applied to evaluate the results and also the effect of omitting one of the seven cohorts on the Pb coefficient. In the various sensitivity analyses performed, the coefficient from the log-linear model was found to be robust and stable. The log-linear model, however, is not biologically plausible at very low blood Pb concentrations as they approach zero; therefore, in the first two functions the log-linear model is applied down to a cutpoint (of 1 μg/dL for the concurrent blood Pb metric), selected based on the low end of the blood Pb levels in the pooled dataset, followed by a linearization or an assumption of zero risk at levels below that point.

In contrast, the coefficients from the two analyses using the population stratified dual linear function with stratification at 7.5 μg/dL and 10 μg/dL, peak blood Pb, have not undergone such careful development. These analyses were primarily done to compare the lead-associated decrement at lower blood Pb concentrations and higher blood Pb concentrations. For these analyses, the study population was stratified at the specified peak blood Pb level and separate linear models were fitted to the concurrent blood Pb data for the children in the two study population subgroups. The fit of the model or sensitivity analyses were not conducted (or reported) on these coefficients. While these analyses are quite suitable for the purpose of investigating whether the slope at lower concentration levels are greater compared to higher concentration levels, use of such coefficients in a risk analysis to assess public health impact may be inappropriate. Further, only 103 children had maximal blood Pb levels less than 7.5 μg/dL and 244 children had maximal blood Pb levels less than 10 μg/dL. While these children may better represent current blood Pb levels, not fitting a single model using all available data may lead to bias. Slob et al. (2005) noted that the usual argument for not considering data from the high dose range is that different biological mechanisms may play a role at higher doses compared to lower doses. However, this does not mean a single curve across the entire exposure range cannot describe the relationship. The fitted curve merely assumes that the underlying dose-response follows a

smooth curve over the whole dose range. If biological mechanisms change when going from lower to higher doses, this change will result in a gradually changing slope of the dose-response. The major strength of the Lanphear et al. (2005) study was the large sample size and the pooled analysis of data from seven different cohorts. In the case of the study population subgroup with peak blood Pb below 7.5 μg/dL, less than 10% of the available data is used in the analysis, with more than half of the data coming from one cohort (Rochester) and the six other cohorts contributing zero to 13 children to the analysis. Such an analysis dissipates the strength of the Lanphear et al. study.

In consideration of the preceding discussion, greater confidence is placed in the log-linear model form compared to the dual-linear stratified models for purposes of the risk assessment described in this notice. Further, in considering risk estimates derived from the four core functions (log-linear function with low-exposure linearization, log-linear function with cutpoint, dual linear function, stratified at 7.5 μg/dL peak blood Pb, and dual linear function, stratified at 10 μg/dL peak blood Pb), greatest confidence is assigned to risk estimates derived using the log-linear function with low-exposure linearization since this function (a) is a nonlinear function that describes greater response per unit blood Pb at lower blood Pb levels consistent with multiple studies identified in the discussion above, (b) is based on fitting a function to the entire pooled dataset (and hence uses all of the data in describing response across the range of exposures), (c) is supported by sensitivity analyses showing the model coefficients to be robust, and (d) provides an approach for predicting IQ loss at the lowest exposures simulated in the assessment (consistent with the lack of evidence for a threshold). Note, however, that risk estimates generated using the other three concentration-response functions are also presented to provide perspective on the impact of uncertainty in this key modeling step.

c. Case Study Approach

For the risk assessment described in this notice, a case study approach was employed as described in Sections 2.2 (and subsections) and 5.1.3 of the Risk Assessment Report (USEPA, 2007b). The four types of case studies included in the assessment are the following:

- *Location-specific urban case studies:* Three urban case studies focus on specific urban areas (Cleveland, Chicago and Los Angeles) to provide perspectives on the magnitude of ambient air Pb-related risk in specific urban locations. Ambient air Pb concentrations are characterized using source-oriented and other Pb-TSP monitors in these cities. As stated above, these case studies were developed in response to CASAC recommendations and there has not been review of the completed analyses for these case studies by CASAC
- *General urban case study:* The general urban case study is a nonlocation-specific analysis that uses several simplifying assumptions regarding ambient air Pb levels and demographics to produce a simplified representation of urban areas.
- *Primary Pb smelter case study:*[33] This case study estimates risk for children living in an area currently not in attainment with the current NAAQS, that is impacted by Pb emissions from a primary Pb smelter. As such, this case study characterizes risk for a specific highly exposed population and also provides insights on risk to child populations living in areas near large sources of Pb emissions.
- *Secondary Pb smelter case study:*[34] This case study was included in the initial analyses for the full-scale assessment as an example of areas influenced by smaller point sources of Pb emissions. As discussed in Section III.B.2.g below, however, a variety of significant limitations in the approaches employed for this case and associated large uncertainties in these results are recognized that preclude considering this case study to be illustrative of the larger set of areas influenced by similarly sized Pb sources. Risk estimates for this case study (presented in detail in the Risk Assessment Report (USEPA, 2007b)) are lower than those for the other case studies.

d. Air Quality Scenarios

Air quality scenarios assessed include (a) a current conditions scenario for the location-specific urban case studies, the general urban case study and the secondary Pb smelter case study, (b) a current NAAQS scenario for the location-specific urban case studies, the general urban case study and the primary Pb smelter case study, and (c) a range of alternative NAAQS scenarios for all case studies. The alternative NAAQS scenarios include levels of 0.5, 0.2, 0.05, and 0.02 μg/m^3, with a monthly averaging time, as well as a level of 0.2 μg/m^3 scenario using a quarterly averaging time.[35] The current NAAQS scenario for the urban case studies assumes ambient air Pb concentrations higher than actual current conditions. While it is extremely unlikely that Pb concentrations in urban areas would rise to meet the current NAAQS and there are limitations and uncertainties associated with the approach used (as described in Section III.B.2.g below), this scenario was included to provide some perspective on risks associated with just meeting the current NAAQS relative to current conditions. When evaluating these results it is important to keep the limitations and uncertainties in mind.

Current conditions for the three location-specific urban case studies in terms of maximum quarterly average air Pb concentrations are 0.09, 0.14 and 0.36 μg/m^3 for the study areas in Los Angeles, Chicago and Cleveland, respectively. In terms of maximum monthly average the values are 0.17 μg/m^3, 0.31 μg/m^3 and 0.56 μg/m^3 for the study areas in Los Angeles, Chicago and Cleveland, respectively. Two current conditions scenarios were considered for the general urban case study: One based on the mean value for ambient air Pb levels in large urban areas (0.14 μg/m^3 as a maximum quarterly average) and a high-end ambient air Pb level in large urban areas (0.87 μg/m^3 as a maximum quarterly average).

Details of the assessment scenarios, including a description of the derivation of Pb concentrations for air and other media are presented in Sections 2.3 (and subsections) and Section 5.1.1 of the Risk Assessment Report (USEPA, 2007b).

e. Categorization of Policy-Relevant Exposure Pathways

To inform policy aspects of the Pb NAAQS review, the assessment estimates for blood Pb and IQ loss were divided into two components: The fraction associated with policy-relevant pathways, which include inhalation, outdoor soil/dust ingestion and indoor dust ingestion, and the fraction associated with background (e.g., diet and drinking water). The policy-relevant pathways are further divided into two categories, ''recent air'' and ''past air''. Conceptually, the recent air category includes those pathways involving Pb that is or has recently been in the outdoor ambient air, including inhalation and ingestion of indoor dust Pb derived from recent ambient air (i.e.,

[33] See Section III.B.2.a for a summary of CASAC's comment with regard to the primary and secondary Pb smelter case studies.

[34] See Section III.B.2.a for a summary of CASAC's comment with regard to the primary and secondary Pb smelter case studies.

[35] For further discussion of the air quality scenarios and averaging times included in the risk assessment, see section 2.3.1 of the Risk Assessment Report (USEPA, 2007b)

air Pb that has penetrated into the residence recently and loaded indoor dust). Past air includes exposure contributions from ingestion of outdoor soil/dust that is contacted on surfaces outdoors, and ingestion of indoor dust Pb that is derived from past air sources (i.e., impacts from Pb that was in the ambient air in the past and has not been recently resuspended into ambient air). In this assessment, as discussed further below, that portion of indoor dust Pb not associated with recent air, is classified as ''other'' and, due to technical limitations includes not only past air impacts, but also contributions from indoor Pb paint. In the risk assessment, estimates of contribution to blood Pb and IQ loss were developed for the following pathways or pathway combinations:

• Inhalation of ambient air Pb (i.e., ''recent air'' Pb): This is derived using the blood Pb estimate resulting from Pb exposure limited to the inhalation pathway (and will include exposures to Pb in ambient air from all sources contributing to the ambient air concentration estimate).

• Ingestion of ''recent air'' indoor dust Pb: This is derived using the blood Pb estimate resulting from Pb exposure limited to ingestion of the Pb in indoor dust that is predicted to be associated with ambient air concentrations (i.e., via the air concentration coefficient in the regression-based dust models or via the mechanistic component of the hybrid blood Pb model (see Section 3.1.4 of the Risk Assessment Report). For the primary Pb smelter case study, estimates for this pathway are not separated from estimates for the pathway described in the subsequent bullet due to uncertainty regarding this categorization with the model used for this case study (Section 3.1.4.2 of the Risk Assessment Report).

• Ingestion of ''other'' indoor dust Pb: This is derived using the blood Pb estimate resulting from Pb exposure limited to ingestion of the Pb in indoor dust that is not predicted to be associated with ambient air concentrations (i.e., that predicted by the intercept in the dust models plus that predicted by the outdoor soil concentration coefficient, for models that include an intercept (Section 3.1.4 of the Risk Assessment Report)). This is interpreted to represent indoor paint, outdoor soil/dust, and additional sources of Pb to indoor dust including historical air (see Risk Assessment Report, Section 2.4.3). As the intercept in regression dust models will be inclusive of error associated with the model coefficients, this category also includes some representation of dust Pb associated with current ambient air concentrations (described in previous bullet). For the primary Pb smelter case study, estimates for this pathway are not separated from estimates for the pathway described above due to uncertainty regarding this categorization with the model used for this case study (Risk Assessment Report, Section 3.1.4.2). This pathway is included in the ''past air'' category.

• Ingestion of outdoor soil/dust Pb: This is derived using the blood Pb estimate resulting from Pb exposure limited to ingestion of outdoor soil/dust Pb. This pathway is included in the ''past air'' category (and could include contamination from historic Pb emissions from automobiles and Pb paint).

• Ingestion of drinking water Pb: This is derived using the blood Pb estimate resulting from Pb exposure limited to ingestion of drinking water Pb. This pathway is included in the policy-relevant background category.

• Ingestion of dietary Pb: This is derived using the blood Pb estimate resulting from Pb exposure limited to ingestion of dietary Pb. This pathway is included in the policy-relevant background category.

In simulating reductions in exposure associated with reducing ambient air Pb levels through alternative NAAQS (and increases in exposure if the current NAAQS was reached in certain case studies), modeling for the assessment has only affected the exposure pathways categorized as recent air (inhalation and ingestion of that portion of indoor dust associated with outdoor ambient air). The assessment has not simulated decreases in past air-related exposure pathways (e.g., reductions in outdoor soil Pb levels following reduction in ambient air Pb levels and a subsequent decrease in exposure through incidental soil ingestion and the contribution of outdoor soil to indoor dust). This aspect of the analysis will tend to underestimate the reductions in risk associated with alternative NAAQS. However, this does not mean that overall risk has been underestimated. The net effect of all sources of uncertainty or bias in the analysis, which may also tend to under- or overestimate risk, could not be quantified.

Additionally, there is uncertainty related to parsing out exposure and risk between background and policy-relevant exposure pathways (and subsequent parsing of recent air and past air) resulting from a number of technical limitations. Key among these is that, while conceptually, indoor Pb paint contributions to indoor dust Pb would be considered background and included in modeling background exposures, due to technical limitations related to indoor dust Pb modeling, ultimately, Pb paint was included as part of ''other'' indoor dust Pb (i.e., as part of past air exposure). The inclusion of indoor lead Pb as a component of ''other'' indoor air (and consequently as a component of ''past air'' exposure) represents a source of potential high bias in our prediction of total exposure and risk associated with past air because conceptually, exposure to indoor paint Pb is considered part of background exposure.

In summary, because of limitations in the assessment design, data and modeling tools, the risk attributable to policy-relevant exposure pathways is bounded on the low end by the risk estimated for the ''recent air'' category and on the upper end by the risk estimated for the ''recent air'' plus ''past air'' categories.

f. Analytical Steps

The risk assessment includes four analytical steps, briefly described below and presented in detail in Sections 2.4.4, 3.1, 3.2, 4.1, and 5.1 of the Risk Assessment Report (USEPA, 2007b).

• *Characterization of Pb in ambient air:* The characterization of outdoor ambient air Pb levels uses different approaches depending on the case study (as explained in more detail below): (a) Source-oriented and non-source oriented monitors are assumed to represent different exposure zones in the city-specific case studies, (b) a single exposure level is assumed, based on monitoring data for various cities, for the general urban case study, and (c) ambient levels are estimated using air dispersion modeling based on Pb emissions from a particular facility in the point source case studies.

• *Characterization of outdoor soil/dust and indoor dust Pb concentrations:* Outdoor soil Pb levels are estimated using empirical data and/or fate and transport modeling. Indoor dust Pb levels are predicted using a combination of (a) regression-based models that relate indoor dust to ambient air Pb and/or outdoor soil Pb, and (b) mechanistic models.[36]

• *Characterization of blood Pb levels:* Blood Pb levels for each exposure zone are derived from central-tendency blood Pb concentrations estimated using the

[36] Additional detail on the methods used in characterizing Pb concentrations in outdoor soil and indoor dust are presented in Sections 3.1.3 and 3.1.4 of the Risk Assessment, respectively. Data, methods and assumptions here used in characterizing Pb concentrations in these exposure media may differ from those in other analyses that serve different purposes.

Integrated Exposure and Uptake Biokinetic (IEUBK) model, and concurrent or lifetime average blood Pb is estimated from these outputs as described in Section 3.2.1.1 of the Risk Assessment Report (USEPA, 2007b). For the point source and location-specific urban case studies, a probabilistic exposure model is used to generate population distributions of blood Pb concentrations based on: (a) The central tendency blood Pb levels for each exposure zone, (b) demographic data for the distribution of children (less than 7 years of age) across exposure zones in a study area, and (c) a geometric standard deviation (GSD) intended to characterize interindividual variability in blood Pb (e.g., reflecting differences in behavior and biokinetics related to Pb). For the general urban case study, as demographic data for a specific location are not considered, the GSD is applied directly to the central tendency blood Pb level to estimate a population distribution of blood Pb levels. Additional detail on the methods used to model population blood Pb levels is presented in Sections 3.2.2 and 5.2.2.3 of the Risk Assessment Report (USEPA, 2007b).

• *Risk characterization (estimating IQ loss):* Concurrent or lifetime average blood Pb estimates for each simulated child in each case study population are converted into total Pb-related IQ loss estimates using the concentration-response functions described above.

Key limitations and uncertainties associated with the application of these specific analytical steps are summarized in Section III.B.2.g below.

g. Generating Multiple Sets of Risk Results

In the initial analyses for the full-scale assessment (USEPA, 2007a), EPA implemented multiple modeling approaches for each case study scenario in an effort to characterize the potential impact on exposure and risk estimates of uncertainty associated with the limitations in the tools, data and methods available for this risk assessment and with key analytical steps in the modeling approach. These multiple modeling approaches are described in Section 2.4.6.2 of the final Risk Assessment Report (USEPA, 2007b). In consideration of comments provided by CASAC (Henderson, 2007b) on these analyses regarding which modeling approach they felt had greater scientific support, a pared down set of modeling combinations was identified as the core approach for the subsequent analyses. This core modeling approach includes the following key elements:

• Ambient air Pb estimates (based on monitors or modeling and proportional rollbacks, as described below),

• Background exposure from food and water (as described above),

• The hybrid indoor dust model specifically developed for urban residential applications (which predicts Pb in indoor dust as a function of ambient air Pb and nonair contribution),

• The IEUBK blood Pb model (which predicts blood Pb in young children exposed to Pb from multiple exposure pathways),

• The concurrent blood Pb metric,

• A GSD for concurrent blood Pb of 2.1 to characterize interindividual variability in blood Pb levels for a given ambient level, and

• four different functions relating concurrent blood Pb to IQ loss, including two log-linear models (one with a cutpoint and one with low-exposure linearization) and two dual-linear models with stratification, one stratified at 7.5 μg/dL peak blood Pb and the other at 10 μg/dL peak blood Pb.

For each case study, the core modeling approach employs a single set of modeling elements to estimate exposure and the four different concentration-response functions referenced above to derive four sets of risk results from the single set of exposure estimates. The spread of estimates resulting from application of all four functions captures much of the uncertainty associated model choice in this analytical step. Among these four functions, greater confidence is associated with estimates derived using the log-linear with low-exposure linearization concentration-response function as discussed above.

In addition to employing multiple concentration-response functions, the assessment includes various sensitivity analyses to characterize the potential impact of uncertainty in other key analysis steps on exposure and risk estimates. The sensitivity analyses and uncertainty characterization completed for the risk analysis are described in Sections 3.5, 4.3, 5.2.5 and 5.3.3 of the Risk Assessment Report (USEPA, 2007b).

h. Key Limitations and Uncertainties

As recognized above, EPA has made simplifying assumptions in several areas of this assessment due to the limited data, models, and time available. These assumptions and related limitations and uncertainties are described in the Risk Assessment Report (USEPA, 2007b). Key assumptions, limitations and uncertainties are briefly identified below. EPA considers these aspects of the assessment to be important to the interpretation of the exposure and risk estimates. In the presentation below, limitations (and associated uncertainty) are listed, beginning with those regarding design of the assessment or case studies, followed by those regarding estimation of Pb concentrations in ambient air indoor dust, outdoor soil/dust, and blood, and lastly regarding estimation of Pb-related IQ Loss.

• *Temporal aspects:* Exposure for the simulated child population begins at birth (including a prenatal maternal contribution) and continues for 7 years, with Pb concentrations in all exposure media remaining constant throughout the period, and children residing in the same exposure zone throughout the period. In characterizing exposure media concentrations, annual averages are derived and held constant through the seven year period. Exposure factors and physiological parameters vary with age of the cohort through the seven year exposure period, several exposure factors and physiological parameters are varied on an annual basis within the blood Pb modeling step. These aspects are a simplification of population exposures that contributes some uncertainty to our exposure and risk estimates.

• *General urban case study:* This case study differs from the others in several ways. It is by definition a general case study and not based on a specific location. There is a single exposure zone for the case study within which all media concentrations of Pb are assumed to be spatially uniform; that is, no spatial variation within the area is simulated. Additionally, the case study does not rely on any specific demographic values. Within the single exposure zone a theoretical population of unspecified size is assumed to be uniformly distributed. Thus this case study is a simplified representation of urban areas intended to inform our assessment of the impact of changes in ambient Pb concentrations on risk, but which carries with it attendant uncertainties in our interpretation of the associated exposure and risk estimates. For example, the risk estimates for this case study, while generally representative of an urban residential population exposed to the specified ambient air Pb levels, cannot be readily related to a specific urban population. Specific urban populations are spatially distributed in a nonuniform pattern and experience ambient air Pb levels that vary through time and space. Consequently, interpretations of the associated blood Pb and risk estimates with regard to their relevance to specific urban residential exposures carry

substantial uncertainty and presumably an upward bias in risk, particularly for large areas, across which air concentrations may vary substantially.

• *Point source case studies:* Dispersion modeling was used to characterize ambient air Pb levels in the point source case studies. This approach simulates spatial gradients related to dispersion and deposition of Pb from emitting sources. The details of this modeling is presented in the Risk Assessment Report (USEPA, 2007b). In the case of the point sources modeled, sources were limited to those associated with the smelter operations, and did not include other sources such as resuspension of roadside Pb not related to facility operations, and other stationary sources of Pb within or near the study area. This means that, with distance from the facility, there is likely underestimation of ambient air-related Pb exposure because with increased distance from the facility there would be increasing influence of other sources relative to that of the facility. This limitation is likely to have more significant impact on risk estimates associated with the full study than on those for the subareas (which are the portions of the study area with 1.5 km from the smelter facilities), and to perhaps have a more significant impact on risk estimates associated with the smaller secondary Pb smelter (see below). As noted above, in their review of the July draft risk assessment report, the CASAC Pb Panel made several recommendations for additional exposure and health risk analyses (Henderson, 2007b), including a recommendation that the general urban case study be augmented by the inclusion of risk analyses in specific urban areas of the U.S. In this regard, they specifically stated the following (Henderson, 2007b, p. 3):

> The CASAC strongly believes that it is important that EPA staff make estimates of exposure that will have national implications for, and relevance to, urban areas; and that, significantly, the case studies of both primary lead (Pb) smelter sites as well as secondary smelter sites, while relevant to a few atypical locations, do not meet the needs of supporting a Lead NAAQS. The Agency should also undertake case studies of several urban areas with varying lead exposure concentrations, based on the prototypic urban risk assessment that OAQPS produced in the 2nd Draft Lead Human Exposure and Health Risk Assessments.

• *Secondary Pb smelter case study:* Air Pb concentration estimates derived from the air dispersion modeling completed for the secondary Pb smelter case study are subject to appreciably greater uncertainty than that for those for the primary Pb smelter case study due to a number of factors, including: (a) A more limited and less detailed accounting of emissions and emissions sources associated with the facility (particularly fugitive emissions), (b) a lack of prior air quality modeling analyses and performance analyses, and (c) a substantially smaller number of Pb-TSP monitors in the area that could be used to evaluate and provide confidence in model performance.[37] Further, as mentioned in the previous bullet, no air sources of Pb other than those associated with the facility were accounted for in the modeling. Given the relatively smaller magnitude of emissions from the secondary Pb smelter, the underestimating potential of this limitation with regard to air concentrations with distance from the facility has a greater relative impact on risk estimates for this case study than for the primary Pb smelter case study. The aggregate uncertainty of all of these factors results in low confidence in estimates for this case study. It is observed that exposure and risk estimates are lower than those for the other case studies. Although this case study was initially intended to be used as an example of areas near stationary sources of intermediate size (smaller than the primary Pb smelter), experience with this analysis indicates that substantially more data and multiple case studies differing in several aspects would be needed to broadly characterize risks for such a category of Pb exposure scenarios.

• *Location-specific urban case studies:* The Pb-TSP monitoring network is currently quite limited. The number of monitors available to represent air concentrations in these case studies ranged from six for Cleveland to 11 for Chicago. Accordingly, our estimates of the magnitude of and spatial variation of air Pb concentrations are subject to uncertainty associated with the limited data. In applying the available data to each of these case studies, exposure zones, one corresponding to each monitor, were created and U.S. Census block groups (and the children within those demographic units) were distributed among the exposure zones. The details of the approach used are described in Section 5.1.3 of the Risk Assessment Report (USEPA, 2007b). Although this approach provides a spatial gradient across the study area due to differences in monitor values for each exposure zone, this approach assumes a constant concentration within each exposure zone (i.e., no spatial gradient within a zone). Additionally, the nearest neighbor approach to assign block groups to exposure zones assumes that a monitor adequately represents all locations that are closer to that monitor than to any of the others in the study area. In reality, across block groups there are more variable spatial gradients in a study area than those reflected in the approach used here. This introduces significant uncertainty into the characterization of risk for the urban case studies. As recognized in Section, III.B.2.a, the analyses for these case studies were developed in response to CASAC recommendations on the July 2007 draft Risk Assessment (Henderson, 2007b) and there has not been review of the completed analyses by CASAC.

• *Current NAAQS air quality scenarios:* For the location-specific urban case studies, proportional roll-up procedures were used to adjust ambient air Pb concentrations up to just meet the current NAAQS (see Sections 2.3.1 and 5.2.2.1 of the Risk Assessment Report, USEPA, 2007b, for detailed discussion). EPA recognizes that it is extremely unlikely that Pb concentrations in urban areas would rise to meet the current NAAQS and that there is substantial uncertainty with our simulation of such conditions. In these case studies a proportional roll-up was simulated, such that it is assumed that the current spatial distribution of air concentrations (as characterized by the current data) is maintained and increased Pb emissions contribute to increased Pb concentrations, the highest of which just meets the current standard. There are many other types of changes within a study area that could result in a similar outcome such as increases in emissions from just one specific industrial operation that could lead to air concentrations in a part of the study area that just meet the current NAAQS, while the remainder of the study area remained largely unchanged (at current conditions). For the primary Pb smelter case study, where current conditions exceed the current NAAQS, attainment of the current NAAQS was simulated using air quality modeling, emissions and source parameters used in developing the 2007 proposed revision to the State Implementation Plan for the area (see Section 3.1.1.2 of the Risk Assessment Report (USEPA, 2007b)).

• *Alternative NAAQS air quality scenarios:* In all case studies, proportional roll-down procedures were used to adjust ambient air Pb concentrations downward to attain

[37] The information supporting the air dispersion modeling for the primary Pb smelter case study provides substantially greater confidence in estimates for that case study.

alternative NAAQS (see Sections 2.3.1 and 5.2.2.1 of the Risk Assessment Report, USEPA, 2007b). There is significant uncertainty in simulating conditions associated with the implementation of emissions reduction actions to meet a lower standard. There are a variety of changes other than that represented by a proportional roll-down that could result in air concentrations that just meet lower alternative standards. For example, control measures might be targeted only at the specific area exceeding the standard, resulting in a reduction of air Pb concentrations to the alternate standard while concentrations in the rest of the study area remain unchanged (at current conditions). Consequently, there is significant uncertainty associated with estimates for the alternate NAAQS scenarios.

• *Estimates of outdoor soil/dust Pb concentrations:* Outdoor soil Pb concentration for both the urban case studies and the primary Pb smelter case study are based on empirical data (see Section 3.1.3 of the Risk Assessment). To the extent that the underlying sampling data included areas containing older structures, the impact of Pb paint weathered from older structures on soil Pb levels will be reflected in these empirical estimates. In the case of the urban case studies, a mean value from a sample of houses built between 1940 and 1998 was used to represent soil Pb levels (see Section 3.1.3.1 of the Risk Assessment). Outdoor soil/dust Pb concentrations in all air quality scenarios have been set equal to the values for the current conditions scenarios. An impact of changes in air Pb concentrations on soil concentrations, and the associated impact on dust concentrations, blood Pb and risk estimates were not simulated. In areas where air concentrations have been greater in the past, however, implementation of a reduced NAAQS might be expected to yield reduced soil Pb levels over the long term. As described in Section 2.3.3 of the Risk Assessment Report (USEPA, 2007b), however, there is potentially significant uncertainty associated with this specification, particularly with regard to implications for areas in which a Pb source may locate where one of comparable size had not been previously. Additionally, it is possible that control measures implemented to meet alternative NAAQS may result in changes to soil Pb concentrations; these are not reflected in the assessment.

• *Estimates of indoor dust Pb concentrations for the urban case studies (application of the hybrid model):* The hybrid mechanistic-empirical model for estimating indoor dust Pb for the urban case studies (see Section 3.1.4.1 of the Risk Assessment Report, USEPA, 2007b) has several sources of uncertainty that could significantly impact its estimates. These include: (a) Failure to consider house-to-house variability in factors related to infiltration of outdoor ambient air Pb indoors and subsequent buildup on indoor surfaces, (b) limitations in data available on the rates and efficiency of indoor dust cleaning and removal, (c) limitations in the method for converting model estimates of dust Pb loading to dust Pb concentration needed for blood Pb modeling, and (d) the approach employed to partition estimates of dust Pb concentration into ''recent air'' and ''other'' components (see Section 5.3.3.4 of the Risk Assessment Report, USEPA, 2007b). These last two sources of uncertainty reduce our confidence in estimates of apportionment of dust Pb between ''recent air'' and ''other''. In recognition of this limitation, in evaluating exposure and risk reduction trends related to reducing ambient air Pb levels, focus has been placed on changes in total blood Pb rather than on estimates of ''recent air'' blood Pb.

• *Estimates of indoor dust Pb concentrations for the primary Pb smelter case study (application of the site-specific regression model):* There is uncertainty associated with the site-specific regression model applied in the remediation zone (see Section 3.1.4.2 of the Risk Assessment Report), and relatively greater uncertainty associated with its application to air quality scenarios that simulate notably lower air Pb levels. Limitations in the dataset from which the model was derived limited its form to that of a simple regression that predicts dust Pb concentration as a function of air Pb concentration plus a constant (intercept). However there may be variables in addition to air that influence dust Pb concentrations and their absence in the regression contributes uncertainty to the resulting estimates. To the extent that these unaccounted-for variables are spatially related to the smelter facility Pb sources, our estimates could be biased, not with regard to the absolute dust Pb concentration, but with regard to differences in dust Pb concentration estimate between different air quality scenarios. Those differences may be overestimated because of potential overestimation of the air coefficient and underestimation of the intercept in the regression model. Examples of such unaccounted-for variables are roadside dust Pb and historical contributions to current levels of indoor dust Pb (e.g., Pb that entered a house in the past and continues to contribute to current dust Pb levels).

• *Characterizing interindividual variability using a GSD:* There is uncertainty associated with the GSD specified for each case study (see Sections 3.2.3 and 5.2.2.3 of the Risk Assessment Report). Two factors are described here as contributors to that uncertainty. Interindividual variability in blood Pb levels for any study population (as described by the GSD) will reflect, to a certain extent, spatial variation in media concentrations, including outdoor ambient air Pb levels and indoor dust Pb levels. For each case study, there is significant uncertainty in the specification of spatial variability in ambient air Pb levels and associated indoor dust Pb levels, as noted above. In addition, there are a limited number of datasets for different types of residential child populations from which a GSD can be derived (e.g., NHANES datasets [38] for more heterogeneous populations and individual study datasets for likely more homogeneous populations near specific industrial Pb sources). This uncertainty associated with the GSDs introduces significant uncertainty in exposure and risk estimates for the 95th population percentile.

• *Exposure pathway apportionment for higher percentile blood Pb level and IQ loss estimates:* Apportionment of blood Pb levels for higher population percentiles is assumed to be the same as that estimated using the central tendency estimate of blood Pb in an exposure zone. This introduces significant uncertainty into projections of pathway apportionment for higher population percentiles of blood Pb and IQ loss. In reality, pathway apportionment may differ in higher exposure percentiles. For example, paint and/or drinking water exposures may increase in importance, with air-related contributions decreasing as an overall percentage of blood Pb levels and associated risk. Because of this uncertainty related to pathway apportionment, as mentioned earlier, greater confidence is placed in estimates of total Pb exposure and risk in evaluating the impact of the current NAAQS and alternative NAAQS relative to current conditions.

• *Relating blood Pb levels to IQ loss:* Specification of the quantitative relationship between blood Pb level and

[38] For example, the GSD for the urban case studies, in the risk assessment described in this notice, was derived using NHANES data for the years 1999–2000.

IQ loss is subject to significant uncertainty at lower blood Pb levels (e.g., below 5 μg/dL concurrent blood Pb). As discussed earlier, there are limitations in the datasets and concentration-response analyses available for characterizing the concentration-response relationship at these lower blood Pb levels. For example, the pooled international dataset analyzed by Lanphear and others (2005) includes relatively few children with blood Pb levels below 5 μg/dL and no children with levels below 1 μg/dL. In recognition of the uncertainty in specifying a quantitative concentration-response relationship at such levels, our core modeling approach involves the application of four different functions to generate a range of risk estimates (see Section 4.2.6 and Section 5.3.1 of the Risk Assessment Report, USEPA, 2007b). The difference in absolute IQ loss estimates for the four concentration-response functions for a given case study/air quality scenario combination is typically close to a factor of 3. Estimates of differences in IQ loss between air quality scenarios (in terms of percent), however, are more similar across the four functions, although the function producing higher overall risk estimates (the dual linear function, stratified at 7.5 μg/dL, peak blood Pb) also produces larger absolute reductions in IQ loss compared with the other three functions.

3. Summary of Results

This section presents blood Pb and IQ loss estimates generated in the exposure and risk assessments. Blood Pb estimates are presented first, followed by IQ loss estimates.

a. Blood Pb Estimates

This section presents blood Pb estimates for the median (Table 1) and 95th (Table 2) population percentiles.[39] Each table presents estimates of blood Pb levels resulting from total Pb exposure across all pathways (policy relevant and background), as well as estimates of the percent contribution from ''recent air'' and ''recent plus past air'' exposure categories. As noted in Sections 4.2.4 of the Staff Paper and Section 3.4 of the Risk Assessment Report, given the various limitations of our modeling tools, the contribution to blood Pb levels from air-related exposure pathways and current levels of Pb emitted to the air (including via resuspension) are likely to fall between contributions attributed to ''recent air'' and those attributed to ''recent plus past air''. Key uncertainties regarding partitioning dust Pb into ''recent air'' and ''other'' categories are summarized above (and in Section 4.2.7 of the Staff Paper). The ''recent air'' component of indoor dust Pb is the projected level associated with outdoor ambient air Pb levels, with outdoor ambient air potentially including resuspended, previously deposited Pb which may reflect the resuspension of historic levels of Pb from gasoline and from exterior house and building Pb paint. In presenting the 95th population percentile estimates, it is recognized that 5 percent of the child study population at each case study are estimated to have blood Pb levels above these estimates. Due to technical limitations, however, we believe that it is not possible at this point to reasonably predict the distribution of blood Pb levels for that top 5 percent. Observations regarding the blood Pb results presented in Tables 1 and 2 are presented in Section 4.3 of the Staff Paper.

[39] Blood Pb level estimates for current conditions for these cases studies differ from the national values associated with NHANES. For example, median blood Pb levels presented in Table 1 for the current conditions scenario for the urban case studies are somewhat larger than the national median from the NHANES data for 2003–2004. Specifically, values for the three location-specific urban case studies range from 1.7 to 1.8 μg/dL with the general urban case study having a value of 1.9 μg/dL (current-conditions mean) (see Table 1), while the median value from NHANES (2003–2004) is 1.6 μg/dL (*http://www.epa.gov/envirohealth/children/body_burdens/b1-table.htm*). NHANES values for the 95th percentile were not available for 2003–2004, precluding a comparison of modeled estimates presented in Table 2 against NHANES data. We note, however, that the 95th percentile value in 2001–2002 was 5.8 μg/dL (see footnote 7). However, NHANES values for the 90th percentile (for 2003–2004) were identified and these values can be compared against 90th percentile estimates generated for the urban case studies (see Risk Assessment Report, Appendix O, Section O.3.2 for the location-specific urban case study and Appendix N, Section N.2.1.2 for the general urban case study). The 90th percentile blood Pb levels for the current conditions scenario, for the three location-specific urban case studies range from 4.5 to 4.6 μg/dL, while the estimate for the general urban case study is 5.0 μg/dL. These 90th percentile values for the case study populations are larger than the 90th percentile value of 3.9 μg/dL reported by NHANES for all children in 2003–2004. It is noted that ambient air levels reflected in the urban case studies are likely to differ from those underlying the NHANES data.

Table 1. Summary of blood Pb estimates for median total blood Pb.[40,41]

Air Quality Scenario (and case study)	Policy-relevant source contribution (percent) of total blood Pb		Concurrent blood Pb concentration (total Pb exposure) [a]
	Recent Air[b]	Recent Air plus Past Air[b]	
Location-specific (Chicago)			
Current NAAQS (1.5 μg/m^3, max quarterly)	63%	83%	3.0
Current conditions (0.14 μg/m^3 max quarterly; 0.31 μg/m^3 max monthly)	22%	67%	1.8
Alternative NAAQS (0.2 μg/m^3, max monthly)	17%	67%	1.8
Alternative NAAQS (0.05 μg/m^3, max monthly)	6%	69%	1.6
Alternative NAAQS (0.02 μg/m^3, max monthly)	1%	63%	1.6
Location-specific (Cleveland)			
Current NAAQS (1.5 μg/m^3, max quarterly)	57%	86%	2.1
Current conditions (0.36 μg/m^3 max quarterly; 0.56 μg/m^3 max monthly)	17%	67%	1.8
Alternative NAAQS (0.5 μg/m^3, max monthly)	39%	72%	1.8
Alternative NAAQS (0.2 μg/m^3, max quarterly)	12%	65%	1.7
Alternative NAAQS (0.2 μg/m^3, max monthly)	6%	65%	1.7
Alternative NAAQS (0.05 μg/m^3, max monthly)	1%	63%	1.6
Alternative NAAQS (0.02 μg/m^3, max monthly)	1%	63%	1.6
Location-specific (Los Angeles)			
Current NAAQS (1.5 μg/m^3, max quarterly)	50%	81%	2.6
Current conditions (0.09 μg/m^3 max quarterly; 0.17 μg/m^3 max monthly)	18%	71%	1.7
Alternative NAAQS (0.05 μg/m^3, max monthly)	13%	69%	1.6
Alternative NAAQS (0.02 μg/m^3, max monthly)	6%	63%	1.6
General urban			
Current NAAQS (1.5 μg/m^3, max quarterly)	61%	84%	3.1
Alternative NAAQS (0.5 μg/m^3, max monthly)	41%	73%	2.2
Current conditions –high-end (0.87 μg/m^3, max quarterly)	38%	76%	2.1
Alternative NAAQS (0.2 μg/m^3, max quarterly)	35%	75%	2.0
Current conditions - mean (0.14 μg/m^3, max quarterly)	32%	74%	1.9
Alternative NAAQS (0.2 μg/m^3, max monthly)	26%	74%	1.9
Alternative NAAQS (0.05 μg/m^3, max monthly)	12%	65%	1.7
Alternative NAAQS (0.02 μg/m^3, max monthly)	6%	69%	1.6
Primary Pb smelter - *full study area*			
Current NAAQS (1.5 μg/m^3, max quarterly)	NA	53%	1.5
Alternative NAAQS (0.5 μg/m^3, max monthly)		79%	1.4
Alternative NAAQS (0.2 μg/m^3, max quarterly)		50%	1.4
Alternative NAAQS (0.2 μg/m^3, max monthly)		36%	1.4
Alternative NAAQS (0.05 μg/m^3, max monthly)		50%	1.4
Alternative NAAQS (0.02 μg/m^3, max monthly)		64%	1.4
Primary Pb smelter - *1.5km study area*			
Current NAAQS (1.5 μg/m^3, max quarterly)	NA	87%	4.6
Alternative NAAQS (0.5 μg/m^3, max monthly)		81%	3.2
Alternative NAAQS (0.2 μg/m^3, max quarterly)		72%	2.5
Alternative NAAQS (0.2 μg/m^3, max monthly)		78%	2.3
Alternative NAAQS (0.05 μg/m^3, max monthly)		65%	1.7
Alternative NAAQS (0.02 μg/m^3, max monthly)		69%	1.6

a - All values are rounded to one decimal place.
b -The term "past air" includes contributions from the outdoor soil/dust contribution to indoor dust, historical air contribution to indoor dust, and outdoor soil/dust pathways; "recent air" refers to contributions from inhalation of ambient air Pb or ingestion of indoor dust Pb predicted to be associated with outdoor ambient air Pb levels, with outdoor ambient air also potentially including resuspended, previously deposited Pb (see Section 2.4.3 of the Risk Assessment Report).

[40] As noted in footnote 39, median blood Pb levels generated for the three location-specific urban case studies and the general urban case study for the current conditions scenario are somewhat larger than the median value from NHANES for 2003–2004.

[41] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

Table 2. Summary of blood Pb level estimates for 95th percentile total blood Pb.[42], [43]

Air Quality Scenario (and case study)	Policy-relevant contribution (percent) of total blood Pb		Concurrent blood Pb concentration (total Pb exposure)[a]
	Recent Air[b]	Recent plus Past Air[b]	
Location-specific (Chicago)			
Current NAAQS (1.5 μg/m^3, max quarterly)	65%	87%	10.2
Current conditions (0.14 μg/m^3 max quarterly; 0.31 μg/m^3 max monthly)	18%	68%	6.0
Alternative NAAQS (0.2 μg/m^3, max monthly)	25%	70%	6.0
Alternative NAAQS (0.05 μg/m^3, max monthly)	5%	65%	5.5
Alternative NAAQS (0.02 μg/m^3, max monthly)	4%	67%	5.4
Location-specific (Cleveland)			
Current NAAQS (1.5 μg/m^3, max quarterly)	31%	73%	7.4
Current conditions (0.36 μg/m^3 max quarterly; 0.56 μg/m^3 max monthly)	15%	67%	6.1
Alternative NAAQS (0.5 μg/m^3, max monthly)	25%	70%	6.0
Alternative NAAQS (0.2 μg/m^3, max quarterly)	12%	67%	5.8
Alternative NAAQS (0.2 μg/m^3, max monthly)	7%	67%	5.7
Alternative NAAQS (0.05 μg/m^3, max monthly)	2%	65%	5.4
Alternative NAAQS (0.02 μg/m^3, max monthly)	2%	66%	5.3
Location-specific (Los Angeles)			
Current NAAQS (1.5 μg/m^3, max quarterly)	52%	80%	8.9
Current conditions (0.09 μg/m^3 max quarterly; 0.17 μg/m^3 max monthly)	19%	68%	5.9
Alternative NAAQS (0.05 μg/m^3, max monthly)	9%	67%	5.5
Alternative NAAQS (0.02 μg/m^3, max monthly)	4%	65%	5.4
General urban			
Current NAAQS (1.5 μg/m^3, max quarterly)	60%	83%	10.6
Alternative NAAQS (0.5 μg/m^3, max monthly)	39%	76%	7.4
Current conditions –high-end (0.87 μg/m^3, max quarterly)	38%	75%	7.2
Alternative NAAQS (0.2 μg/m^3, max quarterly)	34%	74%	6.8
Current conditions - mean (0.14 μg/m^3, max quarterly)	29%	72%	6.5
Alternative NAAQS (0.2 μg/m^3, max monthly)	27%	72%	6.4
Alternative NAAQS (0.05 μg/m^3, max monthly)	12%	68%	5.7
Alternative NAAQS (0.02 μg/m^3, max monthly)	7%	67%	5.5
Primary Pb smelter - *full study area*			
Current NAAQS (1.5 μg/m^3, max quarterly)	NA	61%	4.6
Alternative NAAQS (0.5 μg/m^3, max monthly)		74%	4.2
Alternative NAAQS (0.2 μg/m^3, max quarterly)		60%	4.0
Alternative NAAQS (0.2 μg/m^3, max monthly)		63%	4.0
Alternative NAAQS (0.05 μg/m^3, max monthly)		50%	3.8
Alternative NAAQS (0.02 μg/m^3, max monthly)		84%	3.8
Primary Pb smelter - *1.5km study area*			
Current NAAQS (1.5 μg/m^3, max quarterly)	NA	83%	12.3
Alternative NAAQS (0.5 μg/m^3, max monthly)		89%	8.5
Alternative NAAQS (0.2 μg/m^3, max quarterly)		89%	6.6
Alternative NAAQS (0.2 μg/m^3, max monthly)		80%	6.1
Alternative NAAQS (0.05 μg/m^3, max monthly)		78%	4.5
Alternative NAAQS (0.02 μg/m^3, max monthly)		71%	4.2

a - All values are rounded to one decimal place.
b -The term "past air" includes contributions from the outdoor soil/dust contribution to indoor dust, historical air contribution to indoor dust, and outdoor soil/dust pathways, while "recent air" refers to contributions from inhalation of ambient air Pb or ingestion of indoor dust Pb predicted to be associated with outdoor ambient air Pb levels, with outdoor ambient air also potentially including resuspended, previously deposited Pb (see Section 2.4.3 of the Risk Assessment Report).

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[42] As noted in footnote 39, 90th percentile blood Pb levels generated for the three location specific urban case studies and the general urban case study for the current conditions scenario are larger than the 90th percentile value from NHANES for 2003–2004. Note, 95th percentile values were not available for the NHANES 2003–2004 dataset, preventing a direct comparison to modeled estimates presented in Table 2. However, in 2001–2002, the 95th percentile value was 5.8 μg/dL (see footnote 7).

[43] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

b. IQ Loss Estimates

This section presents IQ loss estimates in Tables 3 through 6. These IQ loss estimates need to be understood in the context of the broader and more comprehensive and detailed presentation provided Risk Assessment Report (USEPA, 2007b). The tables presented here include three types of risk estimates:

• *Estimates of IQ loss for all air quality scenarios (based on total Pb exposure):* Tables 3 and 4 present IQ loss estimates for total Pb exposure for each of the air quality scenarios simulated for each case study. Table 3 presents estimates for the population median and Table 4 presents results for the 95th population percentile. These results included both median and 95th population percentile estimates. To reflect the variation in estimates derived from the four different concentration-response functions included in the analysis, three categories of estimates are considered including (a) IQ loss estimates generated using the low concentration-response function (the model that generated the lowest IQ loss estimates), (b) estimates generated using the log-linear with low-exposure linearization (LLL) model, and (c) IQ loss estimates generated using the high concentration-response function (the model that generated the highest IQ loss estimates). For reasons described above, estimates generated using the LLL model have been given emphasis in the summary below.

• *Estimates of IQ loss under the current NAAQS air quality scenario (with pathway apportionment):* Tables 5 and 6 present IQ loss estimates for total Pb exposure based on simulation of just meeting the current NAAQS for the case studies to which the core modeling approach was applied. Specifically, Table 5 presents estimates of the total Pb-related IQ loss for the population median and Table 6 presents estimates for the 95th population percentile. Both of these tables present total IQ loss estimates for (a) total Pb exposure (including both policy-relevant pathways and background sources) and (b) policy-relevant exposures alone (bounded by estimates for ''recent air'' and for ''recent plus past air'').

• *IQ loss incidence estimates for the three location-specific urban case studies:* Estimates of the number of children for each location-specific urban case study projected to have total Pb-related IQ loss greater than one point are summarized in Table 7, and similar estimates for IQ loss greater than 7 points are summarized in Table 8. Also presented are the changes in incidence of the current NAAQS and alternative NAAQS scenarios compared to current conditions, with emphasis placed on estimates generated using the LLL concentration-response function. Estimates are presented for each of the four concentration-response functions used in the core analysis. The complete set of incidence results is presented in Risk Assessment Report Appendix O, Section O.3.4.

The IQ loss results presented in Tables 3 through 8 need to be understood in the context of the broader and more comprehensive and detailed presentation provided in the Risk Assessment Report. Observations regarding the IQ loss results presented in Tables 3 through 8 are presented in Section 4.4 of the Staff Paper.

It is important to point out that the range of absolute IQ loss estimates generated using the four models for a given case study and air quality scenario is typically around a factor of three. However, the relative (proportional) change in IQ loss across air quality scenarios (i.e., the pattern of IQ loss reduction across air quality scenarios for the same case study) is fairly consistent across all four models. This suggests uncertainty in estimates of absolute IQ loss for a median or 95th percentile child with exposures related to a given ambient air Pb level. Accordingly, we have greater confidence in predicting incremental changes in IQ loss across air quality scenarios and this is reflected in the observations presented in Section 4.4 of the Staff Paper. As with the blood Pb estimates, 5 percent of the child study population at each case study location is estimated to have IQ loss above the 95th percentile estimates presented here, however, due to technical limitations of our modeling tools, it is not feasible at this point to reasonably predict the distribution of IQ loss levels for that top 5 percent.

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Table 3. Summary of risk estimates for medians of total-exposure risk distributions. [44]

Case Study and Air Quality Scenario	Points IQ loss (total Pb exposure)[a]		
	Low C-R function estimate	LLL[b]	High C-R function estimate
Location-specific (Chicago)			
Current NAAQS (1.5 µg/m³, max quarterly)	2.4	5.6	8.8
Current conditions (0.14 µg/m³ max quarterly; 0.31 µg/m³ max monthly)	1.4	4.2	5.2
Alternative NAAQS (0.2 µg/m³, max monthly)	1.4	4.2	5.2
Alternative NAAQS (0.05 µg/m³, max monthly)	1.3	4.0	4.8
Alternative NAAQS (0.02 µg/m³, max monthly)	1.3	4.0	4.7
Location-specific (Cleveland)			
Current NAAQS (1.5 µg/m³, max quarterly)	1.7	4.7	6.3
Current conditions (0.36 µg/m³ max quarterly; 0.56 µg/m³ max monthly)	1.4	4.2	5.2
Alternative NAAQS (0.5 µg/m³, max monthly)	1.4	4.2	5.2
Alternative NAAQS (0.2 µg/m³, max quarterly)	1.4	4.1	5.0
Alternative NAAQS (0.2 µg/m³, max monthly)	1.3	4.1	4.9
Alternative NAAQS (0.05 µg/m³, max monthly)	1.3	4.0	4.7
Alternative NAAQS (0.02 µg/m³, max monthly)	1.2	3.9	4.6
Location-specific (Los Angeles)			
Current NAAQS (1.5 µg/m³, max quarterly)	2.1	5.3	7.7
Current conditions (0.09 µg/m³ max quarterly; 0.17 µg/m³ max monthly)	1.4	4.2	5.1
Alternative NAAQS (0.05 µg/m³, max monthly)	1.3	4.0	4.8
Alternative NAAQS (0.02 µg/m³, max monthly)	1.3	4.0	4.7
General Urban			
Current NAAQS (1.5 µg/m³, max quarterly)	2.5	5.8	9.2
Alternative NAAQS (0.5 µg/m³, max monthly)	1.7	4.8	6.4
Current conditions – high-end (0.87 µg/m³ max quarterly)	1.7	4.7	6.3
Alternative NAAQS (0.2 µg/m³, max quarterly)	1.6	4.6	5.9
Current conditions - mean (0.14 µg/m³ max quarterly)	1.5	4.5	5.6
Alternative NAAQS (0.2 µg/m³, max monthly)	1.5	4.4	5.6
Alternative NAAQS (0.05 µg/m³, max monthly)	1.3	4.1	5.0
Alternative NAAQS (0.02 µg/m³, max monthly)	1.3	4.0	4.8
Primary Pb smelter - full study area			
Current NAAQS (1.5 µg/m³, max quarterly)	1.2	3.8	4.4
Alternative NAAQS (0.5 µg/m³, max monthly)	1.0	3.7	4.2
Alternative NAAQS (0.2 µg/m³, max quarterly)	0.9	3.6	4.2
Alternative NAAQS (0.2 µg/m³, max monthly)	0.9	3.6	4.1
Alternative NAAQS (0.05 µg/m³, max monthly)	0.9	3.6	4.0
Alternative NAAQS (0.02 µg/m³, max monthly)	0.9	3.6	4.1
Primary Pb smelter - 1.5km subarea			
Current NAAQS (1.5 µg/m³, max quarterly)	3.7	6.8	11.2
Alternative NAAQS (0.5 µg/m³, max monthly)	2.6	5.8	9.4
Alternative NAAQS (0.2 µg/m³, max quarterly)	2.0	5.2	7.4
Alternative NAAQS (0.2 µg/m³, max monthly)	1.9	5.0	6.9
Alternative NAAQS (0.05 µg/m³, max monthly)	1.4	4.2	5.1
Alternative NAAQS (0.02 µg/m³, max monthly)	1.3	4.0	4.8

a - These columns present the estimates of total IQ loss resulting from total Pb exposure (policy-relevant plus background). Estimates below 1.0 are rounded to one decimal place, all values below 0.05 are presented as <0.1 and values between 0.05 and 0.1 as 0.1. All values above 1.0 are rounded to the nearest whole number.
b-Log-linear with low-exposure linearization concentration-response function.

[44] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

Table 4. Summary of risk estimates for 95th percentile of total-exposure risk distributions.[45]

Case Study and Air Quality Scenario	Points IQ loss (total Pb exposure)[a]		
	Low C-R function estimate	LLL[b]	High C-R function estimate
Location-specific (Chicago)			
Current NAAQS (1.5 µg/m³, max quarterly)	4.7	9.0	12.1
Current conditions (0.14 µg/m³ max quarterly; 0.31 µg/m³ max monthly)	4.1	7.5	11.4
Alternative NAAQS (0.2 µg/m³, max monthly)	4.1	7.5	11.4
Alternative NAAQS (0.05 µg/m³, max monthly)	4.1	7.3	11.3
Alternative NAAQS (0.02 µg/m³, max monthly)	4.1	7.3	11.3
Location-specific (Cleveland)			
Current NAAQS (1.5 µg/m³, max quarterly)	4.3	8.1	11.6
Current conditions (0.36 µg/m³ max quarterly; 0.56 µg/m³ max monthly)	4.1	7.6	11.4
Alternative NAAQS (0.5 µg/m³, max monthly)	4.1	7.5	11.4
Alternative NAAQS (0.2 µg/m³, max quarterly)	4.1	7.4	11.3
Alternative NAAQS (0.2 µg/m³, max monthly)	4.1	7.4	11.3
Alternative NAAQS (0.05 µg/m³, max monthly)	4.0	7.2	11.3
Alternative NAAQS (0.02 µg/m³, max monthly)	4.0	7.2	11.3
Location-specific (Los Angeles)			
Current NAAQS (1.5 µg/m³, max quarterly)	4.5	8.6	11.8
Current conditions (0.09 µg/m³ max quarterly; 0.17 µg/m³ max monthly)	4.1	7.5	11.4
Alternative NAAQS (0.05 µg/m³, max monthly)	4.1	7.3	11.3
Alternative NAAQS (0.02 µg/m³, max monthly)	4.0	7.2	11.3
General Urban			
Current NAAQS (1.5 µg/m³, max quarterly)	4.7	9.1	12.1
Alternative NAAQS (0.5 µg/m³, max monthly)	4.3	8.1	11.6
Current conditions – high-end (0.87 µg/m³ max quarterly)	4.3	8.0	11.6
Alternative NAAQS (0.2 µg/m³, max quarterly)	4.2	7.9	11.5
Current conditions - mean (0.14 µg/m³ max quarterly)	4.2	7.7	11.5
Alternative NAAQS (0.2 µg/m³, max monthly)	4.2	7.7	11.4
Alternative NAAQS (0.05 µg/m³, max monthly)	4.1	7.4	11.3
Alternative NAAQS (0.02 µg/m³, max monthly)	4.1	7.3	11.3
Primary Pb smelter - full study area			
Current NAAQS (1.5 µg/m³, max quarterly)	3.7	6.8	11.2
Alternative NAAQS (0.5 µg/m³, max monthly)	3.4	6.6	11.1
Alternative NAAQS (0.2 µg/m³, max quarterly)	3.2	6.5	11.1
Alternative NAAQS (0.2 µg/m³, max monthly)	3.2	6.4	11.1
Alternative NAAQS (0.05 µg/m³, max monthly)	3.1	6.3	11.0
Alternative NAAQS (0.02 µg/m³, max monthly)	3.1	6.3	11.0
Primary Pb smelter - 1.5km subarea			
Current NAAQS (1.5 µg/m³, max quarterly)	5.0	9.5	12.4
Alternative NAAQS (0.5 µg/m³, max monthly)	4.5	8.5	11.8
Alternative NAAQS (0.2 µg/m³, max quarterly)	4.2	7.8	11.5
Alternative NAAQS (0.2 µg/m³, max monthly)	4.1	7.6	11.4
Alternative NAAQS (0.05 µg/m³, max monthly)	3.6	6.8	11.1
Alternative NAAQS (0.02 µg/m³, max monthly)	3.3	6.5	11.1

a - These columns present the estimates of total IQ loss resulting from total Pb exposure (policy-relevant plus background). Estimates below 1.0 are rounded to one decimal place, all values below 0.05 are presented as <0.1 and values between 0.05 and 0.1 as 0.1. All values above 1.0 are rounded to the nearest whole number.
b-Log-linear with low-exposure linearization concentration-response function.

[45] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

Table 5. Median IQ loss estimates for the current NAAQS scenario.[46]

Case study	IQ Loss from policy relevant exposures (recent air plus past air) [a]						Total IQ loss (total Pb exposure) [b]		
	Low C-R function estimates		LLL C-R function estimates		High C-R function estimates				
	Recent air	Recent air + past air	Recent air	Recent air + past air	Recent air	Recent air + past air	Low C-R function estimates	LLL C-R function estimates	High C-R function estimates
Location-specific (Chicago)	1.4	2.0	3.4	4.7	5.6	7.4	2.4	5.6	8.8
Location-specific (Cleveland)	0.6	1.4	2.8	3.9	2.1	4.6	1.7	4.7	6.3
Location-specific (Los Angeles)	1.1	1.7	2.7	4.2	4.0	6.2	2.1	5.3	7.7
General urban	1.5	2.1	3.5	4.8	5.6	7.7	2.5	5.8	9.2
Primary Pb smelter-full area		0.6 [c]		1.9		2.3	1.2	3.8	4.4
Primary Pb smelter - subarea		3.2		6.0		9.4	3.7	6.8	11.2

a - These columns present the IQ loss estimated to result from policy-relevant Pb exposure, including recent air and recent plus past air. Estimates for the low C-R function, the LLL C-R function and the high C-R function are presented. The term "past air" includes contributions from the outdoor soil/dust contribution to indoor dust, historical air contribution to indoor dust, and outdoor soil/dust pathways, while "recent air" refers to contributions from inhalation of ambient air Pb or ingestion of indoor dust Pb predicted to be associated with outdoor ambient air Pb levels, with outdoor ambient air also potentially including resuspended, previously deposited Pb (see Risk Assessment Report, Section 2.4.3).
b- These columns present the estimates of total IQ loss resulting from total Pb exposure (policy-relevant plus background). Results are presented for the low C-R function, the LLL C-R function and the high C-R function.
c- Risk estimates are not presented for recent air for the primary Pb smelter case study (See Section 3.2.2 of the Risk Assessment Report).

Table 6. 95th percentile IQ loss estimates for the current NAAQS scenario[47]

Case study	IQ Loss from policy relevant exposures (recent air plus past air) [a]						Total IQ loss (total Pb exposure) [b]		
	Low C-R function estimates		LLL C-R function estimates		High C-R function estimates				
	Recent air	Recent air + past air	Recent air	Recent air + past air	Recent air	Recent air + past air	Low C-R function estimates	LLL C-R function estimates	High C-R function estimates
Location-specific (Chicago)	3.0	4.0	5.8	7.6	7.7	10.3	4.7	9.0	12.1
Location-specific (Cleveland)	1.4	3.1	2.6	5.9	3.7	8.5	4.3	8.1	11.6
Location-specific (Los Angeles)	2.3	3.6	4.4	6.9	6.1	9.5	4.5	8.6	11.8
General urban	2.9	3.9	5.5	7.6	7.3	10.1	4.7	9.1	12.1
Primary Pb smelter - full area	c	2.3		4.2		6.8	3.7	6.8	11.2
Primary Pb smelter - subarea		4.2		8.0		10.4	5.0	9.5	12.4

a – These columns present the IQ loss estimated to result from policy-relevant Pb exposure, including recent air and recent plus past air. Estimates for the low C-R function, the LLL C-R function and the high C-R function are presented. The term "past air" includes contributions from the outdoor soil/dust contribution to indoor dust, historical air contribution to indoor dust, and outdoor soil/dust pathways, while "recent air" refers to contributions from inhalation of ambient air Pb or ingestion of indoor dust Pb predicted to be associated with outdoor ambient air Pb levels, with outdoor ambient air also potentially including resuspended, previously deposited Pb (see Risk Assessment Report, Section 2.4.3).
b- These columns present the estimates of total IQ loss resulting from total Pb exposure (policy-relevant plus background). Results are presented for the low C-R function, the LLL C-R function and the high C-R function.
c- Risk estimates are not presented for recent air for the primary Pb smelter case study (see Section 3.2.2 of the Risk Assessment Report).

[46] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

[47] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

Table 7. Incidence of children with >1 point Pb-related IQ loss. [48]

Air Quality Scenario (for location-specific urban case studies)	dual linear - stratified at 7.5 µg/dL peak blood Pb		log-linear with linearization		dual linear - stratified at 10 µ/dL peak blood Pb		log-linear with cutpoint	
	Incidence of >1 point IQ loss	Delta (change in incidence compared to current conditions)	Incidence of >1 point, IQ loss	Delta (change in incidence compared to current conditions)	Incidence of >1 point, IQ loss	Delta (change in incidence compared to current conditions)	Incidence of >1 point, IQ loss	Delta (change in incidence compared to current conditions)
Chicago (total modeled child population: 396,511)								
Chicago Current Conditions (Mean)	391,602		389,754		271,031		236,257	
Current NAAQS (1.5 µg/m^3 Maximum Quarterly)	395,797	4,195	395,528	5,773	347,415	76,384	314,053	77,795
Alternative NAAQS (0.2 µg/m^3 Maximum Monthly)	391,158	-444	389,461	-293	271,444	412	235,559	-698
Alternative NAAQS (0.05 µg/m^3 Maximum Monthly)	389,572	-2,030	387,407	-2,347	253,775	-17,256	224,394	-11,864
Alternative NAAQS (0.02 µg/m^3 Maximum Monthly)	389,176	-2,427	386,630	-3,125	249,865	-21,166	219,294	-16,963
Cleveland (total modeled child population: 13,990)								
Cleveland Current Conditions (Mean)	13,809		13,745		9,526		8,515	
Current NAAQS (1.5 µg/m^3 Maximum Quarterly)	13,893	84	13,857	112	10,664	1,137	9,769	1,254
Alternative NAAQS (0.2 µg/m^3 Maximum Quarterly)	13,770	-38	13,703	-42	9,221	-305	8,160	-354
Alternative NAAQS (0.5 µg/m^3 Maximum Monthly)	13,789	-20	13,720	-25	9,497	-29	8,464	-51
Alternative NAAQS (0.2 µg/m^3 Maximum Monthly)	13,759	-50	13,694	-51	9,083	-443	8,010	-505
Alternative NAAQS (0.05 µg/m^3 Maximum Monthly)	13,729	-80	13,642	-103	8,785	-741	7,720	-795
Alternative NAAQS (0.02 µg/m^3 Maximum Monthly)	13,720	-88	13,628	-117	8,736	-790	7,668	-846
Los Angeles (total modeled child population: 372,252)								
Los Angeles Current Conditions (Mean)	282,216		280,711		191,675		170,474	
Current NAAQS (1.5 µg/m^3 Maximum, Quarterly)	285,272	3,056	284,945	4,234	240,988	49,313	226,608	56,134
Alternative NAAQS (0.05 µg/m^3 Maximum Monthly)	281,112	-1,104	279,658	-1,053	183,395	-8,280	161,914	-8,560
Alternative NAAQS (0.02 µg/m^3 Maximum Monthly)	280,740	-1,476	279,057	-1,654	180,745	-10,929	158,234	-12,240

[48] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

Table 8. Incidence of children with >7 points Pb-related IQ loss. [49]

Air Quality Scenario (location-specific urban case studies)	dual linear - stratified at 7.5 ug/dL peak blood Pb		log-linear with linearization		dual linear - stratified at 10 ug/dL peak blood Pb		log-linear with cutpoint	
	Incidence of > 7 points IQ loss	Delta (change in incidence compared to current conditions)	Incidence of > 7 points IQ loss	Delta (change in incidence compared to current conditions)	Incidence of > 7 points IQ loss	Delta (change in incidence compared to current conditions)	Incidence of > 7 points IQ loss	Delta (change in incidence compared to current conditions)
Chicago (total modeled child population: 396,511)								
Chicago Current Conditions (Mean)	136,709		33,664		63		1,015	
Current NAAQS (1.5 μg/m^3 Maximum Quarterly)	244,401	107,692	100,159	66,495	555	492	5,226	4,211
Alternative NAAQS (0.2 μg/m^3 Maximum Monthly)	136,067	-642	32,546	-1,118	48	-16	1,007	-8
Alternative NAAQS (0.05 μg/m^3 Maximum Monthly)	120,706	-16,003	27,367	-6,297	16	-48	864	-151
Alternative NAAQS (0.02 μg/m^3 Maximum Monthly)	117,819	-18,890	26,027	-7,637	8	-56	690	-325
Cleveland (total modeled child population: 13,990)								
Cleveland Current Conditions (Mean)	4,834		1,212		3		46	
Current NAAQS (1.5 μg/m^3 Maximum Quarterly)	6,139	1,305	1,858	647	4	2	105	59
Alternative NAAQS (0.2 μg/m^3 Maximum Quarterly)	4,525	-309	1,073	-139	1	-2	40	-6
Alternative NAAQS (0.5 μg/m^3 Maximum Monthly)	4,806	-28	1,180	-31	1	-2	43	-3
Alternative NAAQS (0.2 μg/m^3 Maximum Monthly)	4,424	-410	1,026	-186	1	-2	43	-3
Alternative NAAQS (0.05 μg/m^3 Maximum Monthly)	4,106	-728	886	-326	0	-3	24	-22
Alternative NAAQS (0.02 μg/m^3 Maximum Monthly)	4,051	-783	866	-345	0	-3	27	-18
Los Angeles (total modeled child population: 372,252)								
Los Angeles Current Conditions (Mean)	94,684		22,665		23		732	
Current NAAQS (1.5 μg/m^3 Maximum, Quarterly)	158,171	63,487	57,834	35,168	183	160	3,771	3,038
Alternative NAAQS (0.05 μg/m^3 Maximum, Monthly)	87,303	-7,382	19,781	-2884	11	-11	624	-109
Alternative NAAQS (0.02 μg/m^3 Maximum, Monthly)	83,909	-10,775	17,939	-4726	17	-6	498	-235

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[49] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

C. Considerations in Review of the Standard

This section presents an integrative synthesis of information in the Criteria Document together with EPA analyses and evaluations. EPA notes that the final decision on retaining or revising the current primary Pb standard is a public health policy judgment to be made by the Administrator. The Administrator's final decision will draw upon scientific information and analyses about health effects, population exposure and risks, as well as judgments about the appropriate response to the range of uncertainties that are inherent in the scientific evidence and analyses. These judgments will be informed by a recognition that the available health effects evidence generally reflects a continuum consisting of ambient levels at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain.

This approach is consistent with the requirements of the NAAQS provisions of the Act and with how EPA and the courts have historically interpreted the Act. These provisions require the Administrator to establish primary standards that, in the Administrator's judgment, are requisite to protect public health with an adequate margin of safety. In so doing, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that primary standards be set at a zero-risk level but rather at a level that avoids unacceptable risks to public health, including the health of sensitive groups.

The following discussion starts with background information on the current standard (section III.C.1), including both the basis for derivation of the current standard and considerations and conclusions from the 1990 Staff Paper (USEPA, 1990b). This is followed by a summary of the general approach for this current review (section III.C.2). Considerations with regard to the adequacy of the current standard are discussed in section III.C.3, with evidence and exposure-risk-based considerations in subsections III.C.3.a and b, respectively, followed by a summary of CASAC advice and recommendations (section III.C.3.c) and, lastly, solicitation of comment on the broad range of policy options (section III.C.3.d). Considerations with regard to elements of alternative standards—indicator, averaging time and form, and level—are discussed in sections III.C.4.a., III.C.4.b, and III.C.4.c, respectively. The discussion with regard to level includes subsections on evidence and exposure-risk-based considerations (sections III.C.4.a and b), followed by a summary of CASAC advice and recommendations (section III.C.4.c) and, lastly, solicitation of comment on the broad range of policy options (section III.C.4.d).

1. Background on the Current Standard

a. Basis for Setting the Current Standard

The current primary standard is set at a level of 1.5 μg/m^3, measured as Pb-TSP, not to be exceeded by the maximum arithmetic mean concentration averaged over a calendar quarter. The standard was set in 1978 to provide protection to the public, especially children as the particularly sensitive population subgroup, against Pb-induced adverse health effects (43 FR 46246). The basis for selecting each of the elements of the standard is described below.

i. Level

EPA's objective in selecting the level of the current standard was ''to estimate the concentration of Pb in the air to which all groups within the general population can be exposed for protracted periods without an unacceptable risk to health'' (43 FR 46252). Consistent with section 109 of the Clean Air Act, the Agency selected a level for the current standard that was below the concentration that was at that time identified as a threshold for adverse health effects (i.e., 40 μg/dl blood Pb), so as to provide an adequate margin of safety. As stated in the notice of final rulemaking, ''This estimate was based on EPA's judgment in four key areas:

(1) Determining the ''sensitive population'' as that group within the general population which has the lowest threshold for adverse effects or greatest potential for exposure. EPA concludes that young children, aged 1 to 5, are the sensitive population.

(2) Determining the safe level of total lead exposure for the sensitive population, indicated by the concentration of lead in the blood. EPA concludes that the maximum safe level of blood lead for an individual child is 30 μg Pb/dl and that population blood lead, measured as the geometric mean, must be 15 μg Pb/dl in order to place 99.5 percent of children in the United States below 30 μg Pb/dl.

(3) Attributing the contribution to blood lead from nonair pollution sources. EPA concludes that 12 μg Pb/dl of population blood lead for children should be attributed to nonair exposure.

(4) Determining the air lead level which is consistent with maintaining the mean population blood lead level at 15 μg Pb/dl [the maximum safe level]. Taking into account exposure from other sources (12 μg Pb/dl), EPA has designed the standard to limit air contribution after achieving the standard to 3 μg Pb/dl. On the basis of an estimated relationship of air lead to blood lead of 1 to 2, EPA concludes that the ambient air standard should be 1.5 μg Pb/m^3.'' (43 FR 46252)

EPA's judgments in these key areas, as well as margin of safety considerations, are discussed below.

The assessment of the science that was presented in the 1977 Criteria Document (USEPA, 1977), indicated young children, aged 1 to 5, as the population group at particular risk from Pb exposure. Children were recognized to have a greater physiological sensitivity than adults to the effects of Pb and a greater exposure. In identifying young children as the sensitive population, EPA also recognized the occurrence of subgroups with enhanced risk due to genetic factors, dietary deficiencies or residence in urban areas. Yet information was not available to estimate a threshold for adverse effects for these subgroups separate from that of all young children. Additionally, EPA recognized both a concern regarding potential risk to pregnant women and fetuses, and a lack of information to establish that these subgroups are more at risk than young children. Accordingly, young children, aged 1 to 5, were identified as the group which has the lowest threshold for adverse effects of greatest potential for exposure (i.e., the sensitive population) (43 FR 46252).

In identifying the maximum safe exposure, EPA relied upon the measurement of Pb in blood (43 FR 46252–46253). The physiological effect of Pb that had been identified as occurring at the lowest blood Pb level was inhibition of an enzyme integral to the pathway by which heme (the oxygen carrying protein of human blood) is synthesized, i.e., delta-aminolevulinic acid dehydratase (δ-ALAD). The 1977 Criteria Document reported a threshold for inhibition of this enzyme in children at 10 μg Pb/dL. The 1977 Criteria Document also reported a threshold of 15–20 μg/dL for elevation of protoporphyrin (EP), which is an indication of some disruption of the heme synthesis pathway. EPA concluded that this effect on the heme synthesis pathway (indicated by EP) was potentially adverse. EPA further described a range of blood levels associated with a progression in

detrimental impact on the heme synthesis pathway. At the low end of the range (15–20 μg/dL), the initial detection of EP associated with blood Pb was not concluded to be associated with a significant risk to health. The upper end of the range (40 μg/dL), the threshold associated with clear evidence of heme synthesis impairment and other effects contributing to clinical symptoms of anemia, was regarded as clearly adverse to health. EPA also recognized the existence of thresholds for additional adverse effects (e.g., nervous system deficits) occurring for some children at just slightly higher blood Pb levels (e.g., 50 μg/dL). Additionally, EPA stated that the maximum safe blood level should not be higher than the blood Pb level recognized by the CDC as ''elevated'' (and indicative of the need for intervention). In 1978, that level was 30 μg/dL.[50]

Having identified the maximum safe blood level in individual children, EPA next made a public health policy judgment regarding the target mean blood level for the U.S. population of young children (43 FR 46252–46253). With this judgment, EPA identified a target of 99.5 percent of this population to be brought below the maximum safe blood Pb level. This judgment was based on consideration of the size of the sensitive subpopulation, and the recognition that there are special high-risk groups of children within the general population. The population statistics available at the time (the 1970 U.S. Census) indicated a total of 20 million children younger than 5 years of age, with 15 million residing in urban areas and 5 million in center cities where Pb exposure was thought likely to be ''high''. Concern about these high-risk groups influenced EPA's determination of 99.5 percent, deterring EPA from selecting a population percentage lower than 99.5 (43 FR 46253). EPA then used standard statistical techniques to calculate the population mean blood Pb level that would place 99.5 percent of the population below the maximum safe level. Based on the then available data, EPA concluded that blood Pb levels in the population of U.S. children were normally distributed with a GSD of 1.3. Based on standard statistical techniques, EPA determined that a thus described population in which 99.5 percent of the population has blood Pb levels below 30 μg/dL would have a geometric mean blood level of 15 μg/dL. EPA described 15 μg/dL as ''the maximum safe blood lead level (geometric mean) for a population of young children'' (43 FR 46247).

When setting the current NAAQS, EPA recognized that the air standard needed to take into account the contribution to blood Pb levels from Pb sources unrelated to air pollution. Consequently, the calculation of the current NAAQS included the subtraction of Pb contributed to blood Pb from nonair sources from the estimate of a safe mean population blood Pb level. Without this subtraction, EPA recognized that the combined exposure to Pb from air and nonair sources would result in a blood Pb concentration exceeding the safe level (43 FR 46253). In developing an estimate of this nonair contribution, EPA recognized the lack of detailed or widespread information about the relative contribution of various sources to children's blood Pb levels, such that an estimate could only be made by inference from other empirical or theoretical studies, often involving adults. Additionally, EPA recognized the expectation that the contribution to blood Pb levels from nonair sources would vary widely, was probably not in constant proportion to air Pb contribution, and in some cases may alone exceed the target mean population blood Pb level (43 FR 46253–46254). The amount of blood Pb attributed to nonair sources was selected based primarily on findings in studies of blood Pb levels in areas where air Pb levels were low relative to other locations in U.S. The air Pb levels in these areas ranged from 0.1 to 0.7 μg/m^3. The average of the reported blood Pb levels for children of various ages in these areas was on the order of 12 μg/dL. Thus, 12 μg/dL was identified as the nonair contribution, and subtracted from the population mean target level of 15 μg/dL to yield a value of 3 μg/dL as the limit on the air contribution to blood Pb.

In determining the air Pb level consistent with an air contribution of 3 μg Pb/dL, EPA reviewed studies assessed in the 1977 Criteria Document that reported changes in blood Pb with different air Pb levels. These studies included a study of children exposed to Pb from a primary Pb smelter, controlled exposures of adult men to Pb in fine particulate matter, and a personal exposure study involving several male cohorts exposed to Pb in a large urban area in the early 1970s (43 FR 46254). Using all three studies, EPA calculated an average slope or ratio over the entire range of data. That value was 1.95 (rounded to 2 μg/dL blood Pb concentration to 1 μg/m^3 air Pb concentration), and is recognized to fall within the range of values reported in the 1977 Criteria Document. On the basis of this 2-to-1 relationship, EPA concluded that the ambient air standard should be 1.5 μg Pb/m^3 (43 FR 46254).

In consideration of the appropriate margin of safety during the development of the current NAAQS, EPA identified the following factors: (1) The 1977 Criteria Document reported multiple biological effects of Pb in practically all cell types, tissues and organ systems, of which the significance for health had not yet been fully studied; (2) no beneficial effects of Pb at then current environmental levels were recognized; (3) data were incomplete as to the extent to which children are indirectly exposed to air Pb that has moved to other environmental media, such as water, soil and dirt, and food; (4) Pb is chemically persistent and with continued uncontrolled emissions would continue to accumulate in human tissue and the environment; and (5) the possibility that exposure associated with blood Pb levels previously considered safe might influence neurological development and learning abilities of the young child (43 FR 46255). Recognizing that estimating an appropriate margin of safety for the air Pb standard was complicated by the multiple sources and media involved in Pb exposure, EPA chose to use margin of safety considerations principally in establishing a maximum safe blood Pb level for individual children (30 μg Pb/dL) and in determining the percentage of children to be placed below this maximum level (about 99.5 percent). Additionally, in establishing other factors used in calculating the standard, EPA used margin of safety considerations in the sense of making careful judgment based on available data, but these judgments were not considered to be at the precautionary extreme of the range of data available at the time (43 FR 46251).

EPA further recognized that, because of the variability between individuals in a population experiencing a given level of Pb exposure, it was considered impossible to provide the same margin

[50] The CDC subsequently revised their advisory level for children's blood Pb to 25 μg/dL in 1985, and to 10 μg/dL 1991. In 2005, with consideration of a review of the evidence by their advisory committee, CDC revised their statement on Preventing Lead Poisoning in Young Children, specifically recognizing the evidence of adverse health effects in children with blood Pb levels below 10 μg/dL and the data demonstrating that no ''safe'' threshold for blood Pb in children had been identified, and emphasizing the importance of preventative measures (CDC, 2005a). Recently, CDC's Advisory Committee on Childhood Lead Poisoning Prevention noted the 2005 CDC statements and reported on a review of the clinical interpretation and management of blood Pb levels below 10 μg/dL (ACCLPP, 2007). More details on this level are provided in Section III.A.1.

of safety for all members in the sensitive population or to define the margin of safety in the standard as a simple percentage. EPA believed that the factors it used in designing the standards provided an adequate margin of safety for a large proportion of the sensitive population. The Agency did not believe that the margin was excessively large or on the other hand that the air standard could protect everyone from elevated blood Pb levels (43 FR 46251).

ii. Averaging Time, Form, and Indicator

The averaging time for the current standard is a calendar quarter. In the decision for this aspect of the standard, the Agency also considered a monthly averaging period, but concluded that ''a requirement for the averaging of air quality data over calendar quarter will improve the validity of air quality data gathered without a significant reduction in the protectiveness of the standards.'' As described in the notice for this decision (43 FR 46250), this conclusion was based on several points, including the following:

- An analysis of ambient measurements available at the time indicated that the distribution of air Pb levels was such that there was little possibility that there could be sustained periods greatly above the average value in situations where the quarterly standard was achieved.
- A recognition that the monitoring network may not actually represent the exposure situation for young children, such that it seemed likely that elevated air Pb levels when occurring would be close to Pb air pollution sources where young children would typically not encounter them for the full 24-hour period reported by the monitor.
- Medical evidence available at the time indicated that blood Pb levels re-equilibrate slowly to changes in air exposure, a finding that would serve to dampen the impact of short-term period of exposure to elevated air Pb.
- Direct exposure to air is only one of several routes of total exposure, thus lessening the impact of a change in air Pb on blood Pb levels.

The statistical form of the current standard is as a not-to-be-exceeded or maximum value. EPA set the standard as a ceiling value with the conclusion that this air level would be safe for indefinite exposure for young children (43 FR 46250).

The indicator is total airborne Pb collected by a high volume sampler (43 FR 46258). EPA's selection of Pb-TSP as the indicator for the standard was based on explicit recognition both of the significance of ingestion as an exposure pathway for Pb that had deposited from the air and of the potential for Pb deposited from the air to become re-suspended in respirable size particles in the air and available for human inhalation exposure. As stated in the final rule, ''a significant component of exposure can be ingestion of materials contaminated by deposition of lead from the air,'' and that, ''in addition to the indirect route of ingestion and absorption from the gastrointestinal tract, non-respirable Pb in the environment may, at some point become respirable through weathering or mechanical action'' (43 FR 46251).

b. Policy Options Considered in the Last Review

During the 1980s, EPA initiated a review of the air quality criteria and NAAQS for Pb. CASAC and the public were fully involved in this review, which led to the publication of a criteria document with associated addendum and a supplement (USEPA, 1986a, 1986b, 1990a), an exposure analysis methods document (USEPA, 1989) and a staff paper (USEPA, 1990b).

Total emissions to air were estimated to have dropped by 94 percent between 1978 and 1987, with the vast majority of it attributed to the reduction of Pb in gasoline. Accordingly, the focus of the last review was on areas near stationary sources of Pb emissions. Although such sources were not considered to have made a significant contribution (as compared to Pb in gasoline) to the overall Pb pollution across large, urban or regional areas, Pb emissions from such sources were considered to have the potential for a significant impact on a local scale. Air Pb concentrations, and especially soil and dust Pb concentrations had been associated with elevated levels of Pb absorption in children and adults in numerous Pb point source community studies. Exceedances of the current NAAQS were found at that time only in the vicinity of nonferrous smelters or other point sources of Pb.

In summarizing and interpreting the health evidence presented in the 1986 Criteria Document and associated documents, the 1990 Staff Paper described the collective impact on children of the effects at blood Pb levels above 15 μg/dL as representing a clear pattern of adverse effects worthy of avoiding. This is in contrast to EPA's identification of 30 μg/dL as a safe blood Pb level for individual children when the NAAQS was set in 1978. The Staff Paper further stated that at blood Pb levels of 10–15 μg/dL, there was a convergence of evidence of Pb-induced interference with a diverse set of physiological functions and processes, particularly evident in several independent studies showing impaired neurobehavioral function and development. Further, the available data did not indicate a clear threshold in this blood Pb range. Rather, it suggested a continuum of health risks down to the lowest levels measured.[51]

For the purposes of comparing the relative protectiveness of alternative Pb NAAQS, the staff conducted analyses to estimate the percentages of children with blood Pb levels above 10 μg/dL and above 15 μg/dL for several air quality scenarios developed for a small set of stationary source exposure case studies. The results of the analyses of child populations living near two Pb smelters indicated that substantial reductions in Pb exposure could be achieved through just meeting the current Pb NAAQS. According to the best estimate analyses, over 99.5% of children living in areas significantly affected by the smelters would have blood Pb levels below 15 μg/dL if the current standard was achieved. Progressive changes in this number were estimated for the alternative monthly Pb NAAQS levels evaluated in those analyses, which ranged from 1.5 μg/m^3 to 0.5 μg/m^3.

In light of the health effects evidence available at the time, the 1990 Staff Paper presented air quality, exposure, and risk analyses, and other policy considerations, as well as the following staff conclusions with regard to the primary Pb NAAQS (USEPA, 1990b, pp. xii to xiv):

(1) ''The range of standards * * * should be from 0.5 to 1.5 μg/m^3.''

(2) ''A monthly averaging period would better capture short-term increases in lead exposure and would more fully protect children's health than the current quarterly average.''

(3) ''The most appropriate form of the standard appears to be the second highest monthly averages {*sic*} in a 3-year span. This form would be nearly as stringent as a form that does not permit any exceedances and allows for discounting of one ''bad'' month in 3 years which may be caused, for example, by unusual meteorology.''

(4) ''With a revision to a monthly averaging time more frequent sampling is needed, except in areas, like roadways remote from lead point sources, where the standard is not expected to be violated. In those situations, the current 1-in-6 day sampling schedule would sufficiently reflect air quality and trends.''

[51] In 1991, the CDC reduced their advisory level for children's blood Pb from 25 μg/dL to 10 μg/dL.

(5) ''Because exposure to atmospheric lead particles occurs not only via direct inhalation, but via ingestion of deposited particles as well, especially among young children, the hi-volume sampler provides a reasonable indicator for determining compliance with a monthly standard and should be retained as the instrument to monitor compliance with the lead NAAQS until more refined instruments can be developed.''

Based on its review of a draft Staff Paper, which contained the above recommendations, the CASAC strongly recommended to the Administrator that EPA should actively pursue a public health goal of minimizing the Pb content of blood to the extent possible, and that the Pb NAAQS is an important component of a multimedia strategy for achieving that goal (CASAC, 1990, p. 4). In noting the range of levels recommended by staff, CASAC recommended consideration of a revised standard that incorporates a ''wide margin of safety, because of the risk posed by Pb exposures, particularly to the very young whose developing nervous system may be compromised by even low level exposures'' (id., p. 3). More specifically, CASAC judged that a standard within the range of 1.0 to 1.5 $\mu g/m^3$ would have ''relatively little, if any, margin of safety;'' that greater consideration should be given to a standard set below 1.0 $\mu g/m^3$; and, to provide perspective in setting the standard, it would be appropriate to consider the distribution of blood Pb levels associated with meeting a monthly standard of 0.25 $\mu g/m^3$, a level below the range considered by staff (id.).

After consideration of the documents developed during the review, EPA chose not to propose revision of the NAAQS for Pb. During the same time period, the Agency published and embarked on the implementation of a broad, multi-program, multi-media, integrated national strategy to reduce Pb exposures (USEPA, 1991). As part of implementing this integrated Pb strategy, the Agency focused efforts primarily on regulatory and remedial clean-up actions aimed at reducing Pb exposures from a variety of non-air sources judged to pose more extensive public health risks to U.S. populations, as well as on actions to reduce Pb emissions to air, particularly near stationary sources. This focus reflected in part the dramatic reduction of Pb in gasoline that occurred since the standard was set in 1978, which resulted in orders-of-magnitude reductions in airborne emissions of Pb, and a significant shift in the types of sources with the greatest Pb emissions. EPA established standards for Pb-based paint hazards and Pb dust cleanup levels in most pre-1978 housing and child-occupied facilities. Additionally, EPA has developed standards for the management of Pb in solid and hazardous waste, oversees the cleanup of Pb contamination at Superfund sites, and has issued regulations to reduce Pb in drinking water (*http://www.epa.gov/lead/regulation.htm*). Beyond these specific regulatory actions, the Agency's Lead Awareness Program has continued to work to protect human health and the environment against the dangers of Pb by conducting research and designing educational outreach activities and materials (*http://www.epa.gov/lead/*). Actions to reduce Pb emissions to air during the 1990s included enforcement of the NAAQS, as well as the promulgation of regulations under Section 112 of the Clean Air Act, including national emissions standards for hazardous air pollutants at primary and secondary Pb smelters, as well as other Pb sources.

2. Approach for Current Review

To evaluate whether it is appropriate to consider retaining the current primary Pb standard, or whether consideration of revisions is appropriate, EPA is considering an approach in this review like that used in the Staff Paper. As discussed below, this approach builds upon the general approach used in the initial setting of the standard, as well as that used in the last review, and reflects the broader body of evidence and information now available.

This approach is based on an integration of information on health effects associated with exposure to ambient Pb; expert judgment on the adversity of such effects on individuals; and policy judgments as to when the standard is requisite to protect public health with an adequate margin of safety, which are informed by air quality and related analyses, quantitative exposure and risk assessments when possible, and qualitative assessment of impacts that could not be quantified.

In conducting this assessment, EPA is aware of the dramatic reductions in air Pb emissions in the U.S. in recent decades.[52] In addition to the dramatic reduction of Pb in gasoline, an additional circumstance that has changed since the standard was set is the enactment of the Clean Air Act Amendments of 1990, which amended Clean Air Act Section 112 to list Pb compounds as hazardous air pollutants (HAP) and to require technology-based and risk-based standards, as appropriate, for major stationary sources of HAP.[53] EPA is also aware that these significantly changed circumstances have raised the question in this review of whether it is still appropriate to maintain a NAAQS for Pb or to retain Pb on the list of criteria pollutants. As a result, this evaluation will consider the status of Pb as a criteria pollutant and assesses whether revocation of the standard is an appropriate option for the Administrator to consider.

As discussed below, in conducting this evaluation, EPA will take into account both evidence-based and quantitative exposure- and risk-based considerations. To the extent that the available information suggests that revision of the current standard may be appropriate to consider, EPA will also evaluate the currently available information to determine the extent to which it supports consideration of a revised standard. In this evaluation, EPA will consider the specific elements of the standard to identify options (in terms of an indicator, averaging time, level, and form) for consideration in making public health policy judgments, based on the currently available information, as to the degree of protection that is requisite to protect public health with an adequate margin of safety.

To help inform the Agency's consideration of the quantitative exposure and risk assessments, summarized above in section III.B, EPA solicits comment on the appropriate weight to be placed on the results from these assessments in evaluating the adequacy of the current primary standard and in considering alternative standards. Specifically, we solicit comment on a number of aspects of the design of the assessments and interpretation of the assessment results, including in particular: (1) The appropriateness of rolling up ambient Pb concentrations to simulate just meeting the current standard for areas in which current concentrations are well below the level of the current standard;[54] (2) the use of a proportional

[52] Detailed information on air Pb emissions, and temporal trends in emissions since 1980 is provided in Section 2.2 of the Staff Paper.

[53] The use of Pb paint in new houses has declined substantially over the 20th century. For example ''an estimated 68% of U.S. homes built before 1940 have Pb hazards, as do 43% of those built during 1940–1959 and 8% of those built during 1960–1977'' (ACCLPP, 2007). We are uncertain of the implications of these reductions for ambient air.

[54] We have not in the past used such an approach in developing risk assessments for other NAAQS reviews since other risk assessments (i.e., for ozone and PM) included a number of areas that did not meet the current NAAQS such that rolling up ambient pollutant concentrations was not needed to characterize risks associated with just meeting the current standard.

method to roll-up and roll-down Pb concentrations to simulate just meeting the current and alternative standards;[55] (3) the categorization and apportionment of policy-relevant exposure pathways and policy-relevant background, particularly with regard to exposures related to historically deposited Pb from leaded gasoline and from Pb paint; and (4) the weight to be given to risk estimates derived using various concentration-response functions. More broadly, we also solicit comment on the approach of considering exposures and risks resulting from the ingestion of historically emitted Pb that may now be present in indoor dust and outdoor soil (e.g., that associated with past use of Pb in gasoline or Pb paint) impacted by ambient air Pb as being policy-relevant for the purpose of setting a NAAQS.

3. Adequacy of the Current Standard

In considering the adequacy of the current standard, EPA will first consider whether it is appropriate to maintain a NAAQS for Pb or to retain Pb on the list of criteria pollutants. As noted above, this question has arisen in this review as a result of the dramatic alteration in the basic patterns of air Pb emissions in the U.S. since the standard was set, that primarily reflects the dramatic reduction of Pb in gasoline, which resulted in orders-of-magnitude reductions in airborne emissions of Pb and a significant shift in the types of sources with the greatest Pb emissions. In addition, Section 112 of the Clean Air Act was amended in 1990 to include Pb compounds on the list of HAP and to require EPA to establish technology-based emission standards for those listed major source categories emitting Pb compounds, and to establish risk-based standards, as appropriate, for those categories of sources.

EPA notes that CASAC specifically examined several scientific issues and related public health (and public welfare) policy issues that the CASAC Lead Review Panel[56] judged to be essential in determining whether delisting Pb or revoking the Pb NAAQS would be appropriate options for the Administrator to consider. In its letter to the Administrator of March 27, 2007, based on its review of the first draft Staff Paper (Henderson, 2007a; Attachment A of the Staff Paper), CASAC's examination of these issues was framed by the following series of questions:

(1) Does new scientific information accumulated since EPA's promulgation of the current primary Lead NAAQS of 1.5 μg/m^3 in 1978 suggest that science previously overstated the toxicity of lead?

(2) Have past regulatory and other controls on lead decreased PbB [blood lead] concentrations in human populations so far below levels of concern as to suggest there is now an adequate margin of safety inherent in those PbB levels?

(3) Have the activities that produced emissions and atmospheric redistribution of lead in the past changed to such an extent that society can have confidence that emissions will remain low even in the absence of NAAQS controls?

(4) Are airborne concentrations and amounts of lead sufficiently low throughout the United States that future regulation of lead exposures can be effectively accomplished by regulation of lead-based products and allowable amounts of lead in soil and/or water?

(5) If lead were de-listed as a criteria air pollutant, would it be appropriately regulated under the Agency's Hazardous Air Pollutants (HAP) program?

For the reasons presented in its March 2007 letter, the CASAC Lead Review Panel judged that the answer to each of these questions was ''no,'' leading the Panel to conclude that ''the existing state of science is consistent with continuing to list ambient lead as a criteria pollutant for which fully-protection NAAQS are required'' (id, p. 5). Further, in a subsequent letter to the Administrator of September 27, 2007, based on its review of the second draft Risk Assessment Report (Henderson, 2007b; Attachment B of the Staff Paper), CASAC strongly reiterated its opposition to any considered delisting of Pb, and expressed its unanimous support for maintaining fully-protective NAAQS (id., p. 2). The EPA seeks comment and supporting information on the issue of whether it would be appropriate for EPA to determine that emissions of Pb no longer contribute to air pollution that may reasonably be anticipated to endanger public heath. EPA also solicits comment and supporting information on the extent to which reductions in the ambient air Pb standard would benefit public health.

In considering the adequacy of the current standard, EPA will consider the available evidence and quantitative exposure- and risk-based information, summarized below.

a. Evidence-Based Considerations

In considering the broad array of health effects evidence assessed in the Criteria Document with respect to the adequacy of the current standard, EPA will focus on those health endpoints associated with the Pb exposure and blood levels most pertinent to ambient exposures. Additionally, we will give particular weight to evidence available today that differs from that available at the time the standard was set with regard to its support of the current standard.

First, with regard to the sensitive population, the susceptibility of young children to the effects of Pb is well recognized, in addition to more recent recognition of effects of chronic exposure to low level Pb with advancing age (CD, Sections 5.3.7 and pp. 8–73 to 8–75). The prenatal period and early childhood are periods of increased susceptibility to Pb exposures, with evidence of adverse effects on the developing nervous system that generally appear to persist into later childhood and adolescence (CD, Section 6.2).[57] Thus, while the sensitivity of the elderly and other particular subgroups is recognized, as at the time the standard was set, young children continue to be recognized as the key sensitive population for Pb exposures.

With regard to the exposure levels at which adverse health effects occur, the current evidence demonstrates the occurrence of adverse health effects at appreciably lower blood Pb levels than those demonstrated by the evidence at the time the standard was set. This change in the evidence since the time the standard was set is reflected in changes made by the CDC in their advisory level for Pb in children's blood, and changes they have made in their characterization of that level. Although CDC recognized a level of 30 μg/dL blood Pb as warranting individual intervention in 1978 when the Pb NAAQS was set, in 2005 they recognized the evidence of adverse health effects in children with blood Pb levels below 10 μg/dL and the data demonstrating that no ''safe'' threshold for blood Pb had been identified (CDC, 1991; CDC, 2005).

The Criteria Document describes current evidence regarding the occurrence of a variety of adverse health

[55] There are other methods that might be used.

[56] This Lead Panel includes the statutorily defined seven-member CASAC and additional subject-matter experts needed to provide an appropriate breadth of expertise for this review of the Pb NAAQS.

[57] For example, the following statement is made in the Criteria Document ''Negative Pb impacts on neurocognitive ability and other neurobehavioral outcomes are robust in most recent studies even after adjustment for numerous potentially confounding factors (including quality of care giving, parental intelligence, and socioeconomic status). These effects generally appear to persist into adolescence and young adulthood.'' (CD, p.E–9)

effects, including those on the developing nervous system, associated with blood Pb levels extending well below 10 μg/dL to 5 μg/dL and possibly lower (CD, Sections 8.4 and 8.5).[58] With regard to the evidence of effects on the developing nervous system at these low levels, EPA notes, in particular, the international pooled analysis by Lanphear and others (2005), studies of individual cohorts such as the Rochester, Boston, and Mexico City cohorts (Canfield *et al.*, 2003a; Canfield *et al.*, 2003b; Bellinger and Needleman, 2003; Tellez-Rojo *et al.*, 2006), the study of African-American inner-city children from Detroit (Chiodo *et al.*, 2004), and the cross-sectional analysis of a nationally representative sample from the NHANES III (conducted from 1988–1994), in which the mean blood Pb level was 1.9 μg/dL (Lanphear *et al.*, 2000). Further, current evidence does not indicate a threshold for the more sensitive health endpoints such as adverse effects on the developing nervous system (CD, pp. 5–71 to 5–74 and Section 6.2.13).

As when the standard was set in 1978, EPA recognizes that there remain today contributions to blood Pb levels from nonair sources. Estimating contributions from nonair sources are complicated by the persistent nature of Pb. For example, Pb that is a soil or dust contaminant today may have been airborne yesterday or many years ago. The studies currently available and reviewed in the Criteria Document that evaluate the multiple pathways of Pb exposure do not usually distinguish between outdoor soil/dust Pb resulting from historical emissions and outdoor soil/dust Pb resulting from recent emissions. Further, while indoor dust Pb has been identified as being a predominant contributor to children's blood Pb, available studies do not distinguish the different pathways (air-related and other) contributing to indoor dust Pb. As recognized in Section III.A. above (including footnote 13), some studies have found that dietary intake of Pb may be a predominant source of Pb exposure *among adults*, greater than consumption of water and beverages or inhalation (CD, p. 3–43). The exposure assessment for children performed for this review has employed available data and methods to develop estimates intended to inform a characterization of these pathways.

Consistent with reductions in air Pb concentrations[59] which contribute to blood Pb, nonair contributions have also been reduced. For example, the use of Pb paint in new houses has declined substantially over the 20th century, such that ''an estimated 68% of U.S. homes built before 1940 have Pb hazards, as do 43% of those built during 1940–1959 and 8% of those built during 1960–1977'' (ACCLPP, 2007). Additionally, Pb contributions to diet have been reported to have declined significantly since 1978, perhaps as much as 70% or more between then and 1990 (WHO, 1995) and the 2006 Criteria Document identifies a drop in dietary Pb intake by 2 to 5 year olds of 96% between the early 1980s and mid 1990s. The 1977 Criteria Document included a dietary Pb intake estimate for the general population of 100 to 350 μg Pb/day (USEPA 1977, p. 1–2) and the 2006 Criteria Document cites recent studies indicating a dietary intake ranging from 2 to 10 μg Pb/day (CD, Section 3.4 and p. 8–14). Reductions in elevated blood Pb levels in urban areas indicate that other nonair contributions to blood Pb (e.g., drinking water distribution systems, and Pb-based paint) have also been reduced since the late 1970s. In their March 2007 letter to the Administrator, the CASAC Pb Panel recommended that 1.0–1.4 μg/dL or lower be considered as an estimate of the nonair component of blood Pb.

As in 1978, the evidence demonstrates that Pb in ambient air contributes to Pb in blood, with the pertinent exposure routes including both inhalation and ingestion (CD, Sections 3.1.3.2, 4.2 and 4.4; Hilts et al., 2003). In 1978, the evidence indicated a quantitative relationship between ambient air Pb and blood Pb—i.e., the ratio describing the increase in blood Pb per unit of air Pb—that ranged from 1:1 to 1:2 (USEPA, 1977). In setting the standard, the Agency relied on a ratio of 1:2, i.e., 2 μg/dL blood Pb per 1 μg/m^3 air Pb (43 FR 46252). The evidence now and in the past on this relationship is limited by the circumstances in which the data are collected. Specific measurements of Pb in blood that derived from Pb that had been in the air are not available. Rather, estimates are available for the relationship between Pb concentrations in air and Pb levels in blood, developed from populations in differing Pb exposure circumstances, which inform this issue. Many of the currently available reviews of estimates for air-to-blood ratios, which include air contributions from both inhalation and ingestion exposure pathways, indicate that such ratios generally fall between 1:3 to 1:5, with some higher[60] (USEPA 1986a, pp. 11–99 to 11–100 and 11–106; Brunekreef, 1984). Findings of a recent study of changes in children's blood Pb levels associated with reduced Pb emissions and associated air concentrations near a Pb smelter in Canada indicates a ratio on the order of 1:7 (CD, pp. 3–23 to 3–24; Hilts et al., 2003). In their advice to the Agency, CASAC identified values of 1:5 as used by the World Health Organization (2000) and 1:10 as supported by an empirical analysis of changes in air Pb and changes in blood Pb between 1976 and the time when the phase-out of Pb from gasoline was completed (Henderson, 2007a).[61] While there is uncertainty in the absolute value of the air-to-blood relationship, the current evidence indicates a notably greater ratio, with regard to increase in blood Pb, than the 1978 1:2 relationship e.g., on the order of 1:3 to 1:5 with some higher estimates (see footnote 60) and some lower estimates (down to 1:1). EPA's consideration of this issue in 1986 indicated that ratios which consider both inhalation and ingestion pathways are ''necessarily higher than those estimates for inhaled air lead alone'' (USEPA, 1986a, p. 11–106). We solicit comment on data or studies that may help inform our understanding of this important parameter.

Based on this information, the Staff Paper concluded that young children remain the sensitive population of primary focus in this review, there is now no recognized safe level of Pb in

[58] For context, it is noted that the 2001–2004 median blood level for children aged 1–5 of all races and ethnic groups is 1.6 μg/dL, the median for the subset living below the poverty level is 2.3 μg/dL and 90th percentile values for these two groups are 4.0 μg/dL and 5.4 μg/dL, respectively. Similarly, the 2001–2004 median blood level for black, non-hispanic children aged 1–5 is 2.5 μg/dL, while the median level for the subset of that group living below the poverty level is 2.9 μg/dL and the median level for the subset living in a household with income more than 200% of the poverty level is 1.9 μg/dL. Associated 90th percentile values for 2001–2004 are 6.4 μg/dL (for black, non-hispanic children aged 1–5), 7.7 μg/dL (for the subset of that group living below the poverty level) and 4.1 μg/dL (for the subset living in a household with income more than 200% of the poverty level). (*http://www.epa.gov/envirohealth/children/body_burdens/b1-table.htm*—then click on ''Download a universal spreadsheet file of the Body Burdens data tables'').

[59] Air Pb concentrations nationally are estimated to have declined more than 90% since the early 1980s.

[60] For example, adjusted ratios from Brunekreef (1984, Table 1) ranged up to 1:8.5 and unadjusted ratios extended above 1:10.

[61] The CASAC Panel stated ''The Schwartz and Picher analysis showed that in 1978, the midpoint of the National Health and Nutrition Examination Survey (NHANES) II, gasoline lead was responsible for 9.1 μg/dL of blood lead in children. Their estimate is based on their coefficient of 2.14 μg/dL per 100 metric tons (MT) per day of gasoline use, and usage of 426 MT/day in 1976. Between 1976 and when the phase-out of lead from gasoline was completed, air lead concentrations in U.S. cities fell a little less than 1 μg/m^3 (24). These two facts imply a ratio of 9–10 μg/dL per μg/m^3 reduction in air lead, taking all pathways into account.'' (Henderson, 2007a, page D–2 to D–3).

children's blood, and studies appear to show adverse effects at mean concurrent blood Pb levels as low as 2 ug/dL (CD, pp. 6–31 to 6–32; Lanphear et al., 2000). Further, while the nonair contribution to blood Pb has declined, perhaps to a range of 1.0–1.4 μg/dL, the air-to-blood ratio appears to be higher at today's lower blood Pb levels than the estimates at the time the standard was set, with current estimates on the order of 1:3 to 1:5 and perhaps up to 1:10. Using the framework employed in setting the standard in 1978, the more recently available evidence and more recently available estimates may suggest a level for the standard that is lower by an order of magnitude or more.

b. Exposure- and Risk-Based Considerations

In addition to the evidence-based considerations, EPA will also consider exposures and health risks estimated to occur upon meeting the current Pb standard to help inform judgments about the extent to which exposure and risk estimates may be judged to be important from a public health perspective, taking into account key uncertainties associated with the estimated exposures and risks.

As discussed above, young children are the sensitive population of primary focus in this review. The exposure and risk assessment estimates Pb exposure for children (less than 7 years of age), and associated risk of neurocognitive effects in terms of IQ decrements. In addition to the risks (IQ decrement) that were quantitatively estimated, EPA recognizes that there may be long-term adverse consequences of such deficits over a lifetime, that there is evidence of other health effects occurring at similar or higher exposures for young children, and that other health evidence demonstrates associations between Pb exposure and adverse health effects in adults. As noted in section III.B above, the risk assessment results focus predominantly on risk estimates derived using the log-linear with low-exposure linearization (LLL) concentration-response function, with the range associated with the other three functions also being noted.

As noted in the Criteria Document, a modest change in the mean for a health index at the individual level can have substantial implications at the population level (CD, p. 8–77, Sections 8.6.1 and 8.6.2; Bellinger, 2004; Needleman *et al.*, 1982; Weiss, 1988; Weiss, 1990)). For example, for an individual functioning in the low range of IQ due to the influence of risk factors other than Pb, a Pb-associated IQ decline of a few points might be sufficient to drop that individual into the range associated with increased risk of educational, vocational, and social handicap (CD, p. 8–77). Further, given a somewhat uniform manifestation of Pb-related decrements across the range of IQ scores in a population, a downward shift in the mean IQ value is not associated only with a substantial increase in the percentage of individuals achieving very low scores, but also with substantial decreases in percentages achieving very high scores (CD, p. 8–81). The CASAC Pb Panel has advised on this point that ''a population loss of 1–2 IQ points is highly significant from a public health perspective'' (Henderson, 2007a, p. 6).

In this section, risk estimates for the median and for an upper percentile, the 95th are discussed. In setting the standard in 1978, EPA accorded risk management significance to the 99.5th percentile by selecting a mean blood Pb level intended to bring 99.5 percent of the population to or below the then described maximum safe blood Pb level. Similarly, in their advice to EPA in this review, CASAC stated that ''the primary lead standard should be set so as to protect 99.5% of the population'' (Henderson, 2007a, p. 6). In considering estimates from the quantitative assessment that will inform conclusions consistent with this objective, however, EPA and CASAC also recognize uncertainties in the risk estimates at the edges of the distribution and consequently the 95th percentile is reported as the estimate of the high end of the risk distribution (Henderson, 2007b, p. 3). In so doing, however, EPA notes that there are individuals in the population expected to have higher risk, the consideration of which is important given the risk management objectives for the current standard when set in 1978 with regard to the 99.5th percentile.

In addition to estimating IQ loss associated with the combined exposure to Pb from all exposure pathways, EPA estimated IQ loss for two policy-relevant categories of exposure pathways. These are ''recent air'', which conceptually is intended to include contributions to blood Pb associated with Pb that has recently been in the air, and ''past air'', intended to include contributions to blood Pb associated with Pb that was in the air in the past but not in the air recently. In the exposure modeling conducted for the risk assessment, the exposure pathways assigned to the recent air category were inhalation of ambient air Pb and ingestion of the component of indoor dust Pb that is predicted to be associated with ambient air concentrations. The exposure pathways assigned to the past air category were ingestion of outdoor soil/dust Pb and ingestion of the component of indoor dust Pb not assigned to recent air. There are various limitations associated with our modeling tools that affected the estimates for these two categories. As a result, blood Pb levels and associated risks of greatest interest in this review—those associated with exposure pathways involving ambient air Pb and current levels of Pb emitted to the air (including via resuspension)—are likely to fall between estimates for recent air and those for the sum of recent plus past air.[62] Accordingly, this notice presents these two sets of estimates as providing a range of interest, with regard to policy-relevant Pb, for this review.

In considering the adequacy of the current standard, it is important to note that the standard is currently met throughout the country with very few exceptions. The national composite average maximum quarterly mean based on 198 active monitoring sites during 2003–2005 is 0.17 μg/m^3, an order of magnitude below the current standard, indicating that most of the monitored areas of the country are well below the standard. Review of the current monitoring network in light of current information on Pb sources and emissions, however, indicated that monitors are not located near many of the larger sources. Therefore, the assessment may be underestimating Pb concentrations.

Using the current monitoring data, EPA estimated exposure and risk associated with *current conditions* in a general urban case study and in three location-specific urban case studies in areas where air concentrations fall significantly below the current standard.[63] Two current conditions scenarios were assessed for the general urban case study, one based on the 95th percentile of levels in large urban areas (0.87 μg/m^3, maximum quarterly mean) and one based on mean levels in such

[62] Comparisons of blood Pb levels estimated for individual case study populations (from all exposure sources in current conditions scenarios) to national population values from NHANES are noted in footnote 39 in Section III.B.3.a.

[63] Comparisons of median and 90th percentile blood Pb levels estimated for individual case study populations (from all exposure sources in current conditions scenarios) to national population values from NHANES are noted in footnote 39 in Section III.B.3.a. That comparison suggests that modeled estimates generated for the location-specific urban case studies for both population percentiles are somewhat larger than values cited in NHANES (for 2003–2004). However, as mentioned earlier, factors related to Pb exposure, including ambient air levels, are likely to differ for the urban case study populations compared with the national population underlying NHANES.

areas (0.14 μg/m^3, maximum quarterly. Levels in the three location-specific case studies ranged from 0.09 to 0.35 μg/m^3, in terms of maximum quarterly average. For the general urban case study, which is a simplified representation of urban areas, median estimates of total Pb-related IQ loss range from 1.5 to 6.3 points (across all four concentration-response functions), with estimates based on the LLL function of 4.5 and 4.7 points, for the mean and high-end current conditions scenarios, respectively. Associated estimates for exposure pathway contributions to total IQ loss (LLL estimate) at the population median in these two scenarios indicate that IQ loss associated with policy-relevant Pb falls somewhere between 1.3 and 3.6 points. At the 95th percentile for total IQ loss (LLL estimate), IQ loss associated with policy-relevant Pb is estimated to fall somewhere between 2.2 and 6.0 points (Risk Assessment Report, Table 5–9).

For the three location-specific areas, median estimates of total Pb-related IQ loss for current conditions range from 1.4 to 5.2 points (across all four concentration-response functions), with estimates based on the LLL function all being 4.2 points.[64] Median IQ loss associated with policy-relevant Pb (LLL function) is estimated to fall between 0.6 to 2.9 points IQ loss. The 95th percentile estimates for total Pb-related IQ loss across the three location-specific urban case studies range from 4.1 to 11.4 points (across all four concentration-response functions), with estimates based on the LLL function ranging from 7.5 to 7.6 points. At the 95th percentile for the three location-specific urban case studies, IQ loss associated with policy-relevant Pb (LLL function) is estimated to fall between 1.2 to 5.2 points IQ loss (Risk Assessment Report, Tables 5–9 and 5–10).

In order to consider exposure and risk associated with the *current standard,* EPA developed estimates for a case study based on air quality projected to just meet the standard in a location of the country where air concentrations do not meet the current standard (the primary Pb smelter case study). In so doing, we consider it extremely unlikely that air concentrations in urban areas across the U.S. that are currently well below the current standard would increase to just meet the standard. However, we recognize the potential for air Pb concentrations in some areas currently well below the standard to increase to just meet the standard by way of, for example, expansion of existing sources (e.g., facilities operating as secondary smelters may exercise previously used capabilities as primary smelters) or by the congregation of multiple Pb sources in adjacent locations. We have simulated this scenario (increased Pb concentrations to just meet the current standard) in a general urban case study and three location-specific urban case studies. In this scenario, we note substantial uncertainty in simulating how the profile of Pb concentrations might change in the hypothetical case where concentrations increase to just meet the current standard.

Turning first to the estimates of total blood Pb for the current NAAQS scenario simulated for the location-specific urban case studies, we note the extent to which exposures associated with increased air Pb concentrations that simulate just meeting the current standard are estimated to increase blood Pb levels in young children. The magnitude of this for the median total blood Pb ranges from 0.3 μg/dL (an increase of 20 percent) in the case of the Cleveland study area for which current conditions are estimated to be approximately one fourth of the current NAAQS, up to approximately 1 μg/dL (an increase of 50 to 70%) for the Chicago and Los Angeles study areas for which current conditions are estimated to be at or below one tenth of the current NAAQS.

Estimates of IQ loss (for child with median total IQ loss estimate) associated with recent air plus past air Pb at exposures allowed by just meeting the current NAAQS in the primary Pb smelter case study differ when considering the full study area (10 km radius) or the 1.5 km radius subarea. Estimates for median IQ loss associated with the recent air plus past air categories of exposure pathways for the full study area range from 0.6 point to 2.3 points (for the range of concentration-response functions), while these estimates for the subarea range from 3.2 points to 9.4 points IQ loss. The estimates (recent plus past) for the median based on the LLL concentration-response function are 1.9 points IQ loss for the full study area and 6.0 points for the subarea. The 95th percentile estimates of total IQ loss in the subarea range from 5.0 to 12.4 points, with an associated range for the recent air plus past air of 4.2 to 10.4 points.

For the current NAAQS scenario in the three location-specific case studies, estimates of IQ loss associated with policy-relevant Pb for the median total IQ loss range from 0.6 points loss (recent air estimate using low-end concentration-response function) to 7.4 points loss (recent plus past air estimate using the high-end concentration-response function). The corresponding estimates based on the LLL concentration-response function range from 2.7 points (lowest location-specific recent air estimate) to 4.7 points IQ loss (highest location-specific recent plus past air estimate). The comparable estimates of IQ loss for children at the 95th percentile range from 2.6 to 7.6 points for the LLL concentration-response function.

Further, in comparing current NAAQS scenario estimates to current conditions estimates for the three location-specific urban case studies, the estimated difference in total Pb-related IQ loss for the median is about 0.5 to 1.4 points using the LLL concentration-response function and a similar magnitude of difference is estimated for the 95th percentile. The corresponding estimate for the general urban case study is 1.1 to 1.3 points higher total Pb-related IQ loss for the current NAAQS scenario compared to the two current conditions scenarios.

Estimates of median and 95th percentile IQ loss associated with policy-relevant Pb exposure for air quality scenarios under current conditions (which meet the current NAAQS) and, particularly those reflecting conditions simulated to just meet the current standard,[65] indicate levels of IQ loss that some may reasonably consider to be significant from a public health perspective. Further, for the three location-specific urban case studies, the estimated differences in incidences of children with IQ loss greater than one point and with IQ loss greater than seven points in comparing current conditions to those associated with the current NAAQS indicate the potential for significant numbers of children to be negatively affected if air Pb concentrations increased to levels just meeting the

[64] Although the maximum quarterly average concentration for the highest monitor in each study area differs among the three areas by a factor of 4 (0.09 to 0.36 μg/m^3), the population weighted air Pb concentrations for these three study areas are more similar and differ by approximately a factor of 2, with the study area with highest maximum quarterly average concentration having a lower population-weighted air concentration that is more similar to the other two areas. This similarity in population weighted concentrations explains the finding of similar total IQ loss across the three study areas.

[65] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

current standard. Estimates of the additional number of children with IQ loss greater than one point (based on the LLL concentration-response function) in these three study areas with the current NAAQS scenario compared to current conditions range from 100 to 6,000 across the three locations. The corresponding estimates for the additional number of children with IQ loss greater than seven points, for the current NAAQS as compared to the current conditions scenario range from 600 to 35,000. These latter values for the change in incidence of children with greater than seven points Pb-related IQ loss represent 5 to 17 percent of the children (aged less than 7 years of age) in these study areas. This increase corresponds to approximately a doubling in the number of children with this magnitude of Pb-related IQ loss in the study area most affected.

While the risk assessment has quantified risks associated with IQ impacts in childhood, there are other, unquantified adverse neurocognitive effects that may occur at similarly low exposures which might additionally contribute to reduced academic performance, which may have adverse consequences over a lifetime (CD, pp. 8–29 to 8–30). Additional impacts at low levels of childhood exposure that were not quantified in the risk assessment include: other neurological effects (sensory, motor, cognitive and behavioral), immune system effects (including some related to allergic responses and asthma), and early effects related to anemia.

c. CASAC Advice and Recommendations

Beyond the evidence- and risk/exposure-based information discussed above, in considering the adequacy of the current standard, EPA will also consider the advice and recommendations of CASAC, based on their review of the Criteria Document and the drafts of the Staff Paper and the related technical support document, as well as comments from the public on drafts of the Staff Paper and related technical support document.[66] With regard to the public comments, those that addressed adequacy of the current standard concluded that the current standard is inadequate and should be revised, suggesting appreciable reductions in the level. No comments were received expressing the view that the current standard is adequate. One comment was received arguing not that the standard was inadequate but rather that conditions justified that it should be revoked. In both the 1990 review and this review of the standard set in 1978, CASAC, has recommended consideration of more health protective NAAQS. In CASAC's review of the 1990 Staff Paper, as discussed in Section 5.2.2, they generally recommended consideration of levels below 1.0 μg/m^3, specifically recommended analyses of a standard set at 0.25 μg/m^3, and also recommended a monthly averaging time (CASAC, 1990). In two letters to the Administrator during the current review, CASAC has consistently recommended that the primary NAAQS should be ''substantially lowered'' from the current level of 1.5 μg/m^3 to a level of ''0.2 μg/m^3 or less'' (Henderson, 2007a, b). CASAC drew support for this recommendation from the current evidence, described in the Criteria Document, of health effects occurring at dramatically lower blood Pb levels than those indicated by the evidence available when the standard was set.

CASAC concluded that the current Pb NAAQS ''are totally inadequate for assuring the necessary decreases of lead exposures in sensitive U.S. populations below those current health hazard markers identified by a wealth of new epidemiological, experimental and mechanistic studies'', and stated that ''Consequently, it is the CASAC Lead Review Panel's considered judgment that the NAAQS for Lead must be decreased to fully-protect both the health of children and adult populations'' (Henderson, 2007a, p. 5).

d. Policy Options

In considering the adequacy of the current standard, EPA first notes the dramatic changes in the basic patterns of air Pb emissions in the U.S. since the standard was set, reflecting the phase-out of Pb in gasoline, as well as changes to the CAA related to the inclusion of Pb compounds on the list of HAPs and associated requirements for technology- and risk-based standards for major stationary sources. We are aware that questions have been raised about the appropriateness of retaining Pb on the list of criteria pollutants and/or maintaining a NAAQS for Pb in light of these changed circumstances. We take note of the views of CASAC, summarized above, and the conclusions and recommendations in the OAQPS Staff Paper on these questions, which do not support delisting Pb or revoking the Pb NAAQS. We recognize, however, that there may be differing views on interpreting or weighing the available information. Thus, EPA solicits comment related to the questions of delisting and revocation. The EPA also solicits comment on whether the broad range of current multimedia Federal and State Pb control programs, summarized above in section II.C, are sufficient to provide appropriate public health protection in lieu of a Pb NAAQS.

In further considering the adequacy of the current standard, EPA will focus on the body of available evidence (summarized above in section III.A and discussed in the Criteria Document) that is much expanded from that available when the current standard was set. The presentation of the evidence in the Criteria Document describes the occurrence of adverse health effects at appreciably lower blood Pb levels than those demonstrated by the evidence at the time the standard was set. We recognize that the current health effects evidence together with findings from the exposure and risk assessments (summarized above in section III.B), like the information available at the time the standard was set, supports the conclusion that air-related Pb exposure pathways (by inhalation and ingestion) contribute to blood Pb levels in young children. Furthermore, we take note of the information that suggests that the air-to-blood relationship (i.e., the air-to-blood ratio), is likely larger, with regard to increase in blood Pb per unit air concentration, when air inhalation and ingestion are considered than that estimated when the standard was set using only inhalation and may be several times larger. EPA recognizes there is uncertainty in estimates of this relationship and solicits comment on on ratios supported by the current evidence.

In areas projected to just meet the current standard, the quantitative estimates of risk (for IQ decrement) associated with policy-relevant Pb indicate risk of a magnitude that some may consider to be significant from a public health perspective.[67] Further, although the current monitoring data indicate few areas with airborne Pb near or just exceeding the current standard, we recognize significant limitations with the current monitoring network and thus the potential that the prevalence of such levels of Pb

[66] All written comments submitted to the Agency will be available in the docket for this rulemaking, as will be transcripts of the public meeting held in conjunction with CASAC's review of the first draft of the Staff Paper and the first draft of the related technical support document, and of draft and final versions of the Criteria Document.

[67] As recognized in section III.B.2.d above, to simulate air concentrations associated with the current NAAQS, a proportional roll-up of concentrations from those for current conditions was performed for the location-specific urban case studies. This was not necessary for the primary Pb smelter case study in which air concentrations currently exceed the current standard.

concentrations may be underestimated by currently available data.

As summarized above, CASAC conclusions and recommendations and recommendations presented in the OAQPS Staff Paper reflect the view that the current standard is not adequate and support consideration of a revised standard to provide an adequate margin of safety for sensitive groups. Taking these views into account, we recognize that one approach is to consider a revised standard. We also recognize that there may be differing interpretations of the available information. Thus, EPA solicits comment on delisting, revocation, and the adequacy of the current standard and the rationale upon which such views are based.

4. Elements of the Standard

The four elements of the standard—indicator, averaging time, form and level serve to define the standard and must be considered collectively in evaluating the health and welfare protection afforded by the standard. In considering revisions to the current primary Pb standard, as discussed in the following sections, EPA will consider each of the four elements of the standard as to how they might be revised to provide a primary standard for Pb that is requisite to protect public health with an adequate margin of safety.

a. Indicator

The indicator for the current standard is Pb–TSP. When the standard was set, the Agency considered identifying Pb in particles less than or equal to 10 μm in diameter (Pb–PM_{10}) as the indicator in response to comments expressing concern that because only a fraction of airborne particulate matter is respirable, an air standard based on total air Pb is unnecessarily stringent. The Agency responded that while it agreed that some Pb particles are too small or too large to be deposited in the respiratory system, a significant component of exposures can be ingestion of materials contaminated by deposition of Pb from the air. In addition to the route of ingestion and absorption from the gastrointestinal tract, nonrespirable Pb in the environment may, at some point, become respirable through weathering or mechanical action. EPA concluded that total airborne Pb, both respirable and nonrespirable fractions should be addressed by the air standard.

More recently, in the 1990 Staff Paper, this issue was reconsidered in light of information regarding limitations of the high-volume sampler used for the Pb–TSP measurements and the continued use of total suspended particulate matter (TSP) as the indicator was supported by OAQPS staff (USEPA, 1990).

> Given that exposure to lead occurs not only via direct inhalation, but via ingestion of deposited particles as well, especially among young children, the hi-vol provides a more complete measure of the total impact of ambient air lead. * * * Despite its shortcomings, the staff believes the high-volume sampler will provide a reasonable indicator for determination of compliance * * *

In the current review, CASAC has recommended that EPA consider a change in the indicator to utilize low-volume PM_{10} sampling (Henderson, 2007a, b). In so doing, CASAC recognized that a scaling of the NAAQS level would be needed to accommodate the loss of very large coarse-mode Pb particles and concurrent Pb–PM_{10} and Pb–TSP sampling would be needed to inform development of scaling factors. The September 2007 CASAC letter states that the CASAC Lead Panel ''strongly encourages the Agency to consider revising the Pb reference method to allow sample collection by PM_{10}, rather than TSP samplers, accompanied by analysis with low-cost multi-elemental techniques like X-Ray Fluorescence (XRF) or Inductively Coupled Plasma-Mass Spectroscopy (ICP–MS).'' While recognizing the importance of coarse dust contributions to total Pb exposure via the ingestion route and acknowledging that TSP sampling is likely to capture additional very coarse particles which are excluded by PM_{10} samplers, the Panel raised some concerns. The concerns were regarding the precision and variability of TSP samplers, and the inability to efficiently capture the non-homogeneity of very coarse particles in a national monitoring network, which the Panel indicated may need to be addressed in implementing additional monitoring sites and an increased frequency of sample collection that might be required with the substantial reduction in the level of the standard and shorter averaging time that they recommend (Henderson, 2007b).

In considering the appropriate indicator, EPA takes note of and solicits comment on previous Agency conclusions that the health evidence indicates that Pb in all particle size fractions, not just respirable Pb, contributes to Pb in blood and to associated health effects. Additionally, the current information does not support the derivation of a single scaling factor, which might be used to relate a level for Pb–TSP to a monitoring result using Pb–PM_{10} on a national scale. The EPA recognizes, however, that an indicator that exhibits low spatial variability is desirable such that it facilitates implementation of an effective monitoring network, i.e., one that assures identification of areas with the potential to exceed the NAAQS.

To the extent that Pb–PM_{10} exhibits less spatial variability and that a ''crosswalk'' can be developed between a level in terms of Pb–TSP, EPA recognizes that it is appropriate to consider moving to a Pb–PM_{10} indicator in the future. One of the issues to consider when moving to a Pb–PM_{10} indicator is whether regulating concentrations of Pb–PM_{10} will lead to appropriate controls on Pb emissions from sources with a large percentage of Pb in the greater than 10 micron size range (e.g., fugitive dust emissions from Pb smelters). It is reasonable to believe that Pb–PM_{10}/Pb–TSP ratios are sensitive to distance from emissions sources (due to faster deposition of larger particles). As such, the use of a Pb–PM_{10} indicator may have a significant influence on the degree of Pb controls needed from emission sources.

The EPA will consider several options that might improve the available database and facilitate such a move in the future, while retaining Pb–TSP as the indicator for the NAAQS at this time, consistent with the recommendations in the Staff Paper. For example, we might consider describing a FEM in terms of PM_{10} that might be acceptably applied on a site-by-site basis where an appropriate relationship between Pb–TSP and Pb–PM_{10} can be developed based on site-specific data. Alternatively, use of such an FEM might be approved, in combination with more limited Pb–TSP monitoring, in areas where the Pb–TSP data indicate ambient Pb levels are well below the NAAQS level.

These examples were intended purely for purposes of illustrating the types of options the Agency might consider. Specific details of any options would need to be supported by appropriate data analyses. We solicit information and comments that would help inform such analyses and the Agency's views on the indicator for the primary Pb NAAQS.

b. Averaging Time and Form

The basis for the averaging time of the current standard reflects consideration of the evidence available when the Pb NAAQS were promulgated in 1978. At that time, the Agency had concluded that the level of the standards, 1.5 μg/m^3, would be a ''safe ceiling for indefinite exposure of young children'' (43 FR 46250), and that the slightly greater possibility of elevated air Pb levels within the quarterly averaging

period as contrasted to the monthly averaging period proposed in 1977 (43 FR 63076), was not significant for health. These conclusions were based in part on the Agency's interpretation of the health effects evidence as indicating that 30 μg/dL was the maximum safe level of blood Pb for an individual child.

As discussed above, the currently available health effects evidence[68] indicates a variety of neurological effects, as well as immune system and hematological effects, associated with levels below 10 μg/dL as a central tendency metric of study cohorts of young children. Further, EPA recognizes that today ''there is no level of Pb exposure that can yet be identified, with condfidence, as clearly not being associated with some risk of deleterious health effects'' (CD, p. 8–63). Accordingly, to the extent that air Pb contributes to variation in blood Pb, we currently cannot identify a safe ceiling for indefinite exposure of young children.

Additionally, several aspects of the current health effects evidence for Pb pertain to the consideration of averaging time:

- Children are exposed to ambient Pb via inhalation and ingestion, with Pb taken into the body absorbed through the lungs and through the gastrointestinal tract. Studies on Pb uptake, elimination and distribution show that Pb is absorbed into peripheral tissues in adults within a few days (USEPA 1986a; USEPA 1990b, p. IV–2). Absorption of Pb from the gastrointestinal tract appears to be greater and faster in children as compared to adults (CD, Section 4.2.1). Once absorbed, it is quickly distributed from plasma to red blood cells and throughout the body.
- Lead accumulates in the body and is only slowly removed, with bone Pb serving as a blood Pb source for years after exposure and as a source of fetal Pb exposure during pregnancy (CD, Sections 4.3.1.4 and 4.3.1.5).
- Blood Pb levels, including levels of the toxicologically active fraction, respond quickly to increased Pb exposure, such that an abrupt increase in Pb uptake rapidly changes blood Pb levels, with the time to reach a new quasi-steady state with the total body burden after such an occurrence projected to be approximately 75 to 100 days (CD, p. 4–27).
- The elimination half-life, which describes the time for blood Pb levels to stabilize after a reduction in exposure, for the dominant phase for blood Pb responses to changes in exposure is on the order of 20 to 30 days for adults (CD, p. 4–25). Blood elimination half-lives are influenced by contributions from bone. Given the tighter coupling in children of bone stores with blood levels, children's blood Pb is expected to respond more quickly than adults (CD, pp. 4–20 and 4–27).
- Data from NHANES II and an analysis of the temporal relationship between gasoline consumption data and blood lead data generally support the inference of a prompt response of children's blood Pb levels to changes in exposure in that children's blood Pb levels and the number of children with elevated blood Pb levels appear to respond to monthly variations in Pb emissions from Pb in gasoline (EPA, 1986a, p. 11–39; Rabinowitz and Needleman, 1983; Schwartz and Pitcher, 1989).
- The evidence with regard to sensitive neurological effects is limited in what it indicates regarding the specific duration of exposure associated with effect, although it indicates both the sensitivity of the first 3 years of life and a sustained sensitivity throughout the lifespan as the human central nervous system continues to mature and be vulnerable to neurotoxicants (CD, Section 8.4.2.7). The animal evidence supports our understanding of periods of development with increased vulnerability to specific types of effect (CD, Section 5.3), and indicates a potential importance of exposures on the order of months.
- Evidence of a differing sensitivity of the immune system to Pb across and within different periods of life stages indicates a potential importance of exposures as short as weeks to months duration. For example, the animal evidence suggests that the gestation period is the most sensitive life stage followed by early neonatal stage, and within these life stages, critical windows of vulnerability are likely to exist (CD, Section 5.9 and p. 5–245).

Further, evidence described in the Criteria Document and the risk assessment indicate that ingestion of dust can be a predominant exposure pathway for young children to policy-relevant Pb, and that there is a strong association between indoor dust Pb levels and children's blood Pb levels. As stated in the Criteria Document, ''given the large amount of time people spend indoors, exposure to Pb in dusts and indoor air can be significant'' (CD, p. 3–27). The Criteria Document further describes studies that evaluated the influence of dust Pb exposure on children's blood Pb: ''Using a structural equation model, Lanphear and Roghmann (1997) also found the exposure pathway most influential on blood Pb was interior dust Pb loading, directly or through its influence on hand Pb. Both soil and paint Pb influenced interior dust Pb; with the influence of paint Pb greater than that of soil Pb. Interior dust Pb loading also showed the strongest influence on blood Pb in a pooled multivariate regression analysis (Lanphear et al., 1998).'' (CD, p. 4–134).

While some of these aspects of the health effects evidence would be consistent with a quarterly averaging time, taken as a whole, and in combination with information on potential response time for indoor dust Pb levels, EPA recognizes that there is also support for consideration of an averaging time shorter than a calendar quarter.

When the standard was set in 1978, an analysis of ambient measurements available at the time indicated that the distribution of air Pb levels was such that there was little possibility that there could be sustained periods greatly above the average value in situations where the quarterly standard was achieved. This may have been related to the pattern of Pb emissions at the time the standard was set, which differed from the pattern today in that, due to emissions from cars and trucks at that time, emissions were more spatially distributed. In this review, based on data from 2003–2005, the air quality analysis in Chapter 2 of the Staff Paper indicates the presence of areas in the U.S. currently where temporal variability does create differences between average quarterly levels and levels sustained for shorter than quarterly periods. For example, four percent of the monitoring sites in the three-year analysis dataset that meet the current standard as an average over a calendar quarter exceed the level of the current standard when considering an average for any individual month. The same analysis indicates that this number is as high as ten percent for some alternate lower levels.

In further considering the appropriate form of the standard that might accompany a shorter averaging time, EPA will take into account analyses using air quality data for 2003–2005 that characterize maximum quarterly average and various monthly statistics for each year across the three year Pb-TSP dataset and also across the three year period. The latter time period is consistent with the three calendar year attainment period that has been adopted for the ozone and particulate matter

[68] The differing evidence and associated strength of the evidence for these different effects is described in detail in the Criteria Document.

NAAQS subsequent to the promulgation of the Pb NAAQS. For the three year period, the monthly statistics derived are maximum monthly mean, second maximum monthly mean, average of three overall highest monthly means, and average of three annual maximum monthly means; these statistical forms were also considered in the 1990 Staff paper. Additionally, the maximum and 2nd maximum monthly means for each year of the three year data set was derived, as well as the averages of these individual year statistics.

With regard to comparison of monthly forms with the maximum quarterly mean, the average Pb-TSP maximum monthly mean among all 189 sites in the analysis is notably higher (nearly a factor of two) than the average of the average maximum quarterly mean among these sites. Further, this difference is slightly greater for source-oriented sites than non source-oriented sites or urban sites (e.g., a factor of approximately 1.8 as compared to one of approximately 1.6), indicating perhaps an influence of variability in emissions. The alternate forms of a monthly averaging time that were analyzed yield an across-site average that is similar although slightly higher than the quarterly average (e.g., Figure 2–8 in Chapter 2 of the Staff Paper).

The analyses described in Chapter 2 of the Staff Paper consider both a period of three calendar years and one of an individual calendar year (with the form of the current standard being the maximum quarterly mean in any one year). These analyses indicate that with regard to either single-year or 3-year statistics for the 2003–2005 dataset, a 2nd maximum monthly mean yields very similar, although just slightly greater, numbers of sites exceeding various alternate levels as a maximum quarterly mean, with both yielding fewer exceedances than a maximum monthly mean.

In their advice to the Agency, CASAC has recommended that consideration be given to changing from a calendar quarter to a monthly averaging time (Henderson, 2007a, b). In making that recommendation, CASAC emphasizes support from studies that suggest that blood Pb concentrations respond at shorter time scales than would be captured completely by quarterly values, as indicated by their description of their recommendation for adoption of a monthly averaging time as ''more protective of human health in light of the response of blood lead concentrations that occur at sub-quarterly time scales'' (Henderson, 2007b).

With regard to form of the standard, CASAC stated that one could ''consider having the lead standards based on the second highest monthly average, a form that appears to correlated well with using the maximum quarterly value'', while also indicating that ''the most protective form would be the highest monthly average in a year.''

The following observations support consideration of a monthly averaging time: (1) The health evidence indicates that very short exposures can lead to increases in blood Pb Pb levels, (2) the time period of response of indoor dust Pb to airborne Pb can be on the order of weeks and, (3) the health evidence indicates that adverse effects may occur with exposures during relatively short windows of susceptibility, such as prenatally and in developing infants. EPA also recognizes the limited available evidence specific to the consideration of the particular duration of sustained airborne Pb levels having the potential to contribute to the adverse health effects identified as most relevant to this review.

Based on the information and air quality analyses discussed above, EPA is requesting comment on a range of options, including the recommendations in the Staff Paper that include changing the averaging time to monthly, with a form of maximum or second maximum, as well as retaining the quarterly averaging time. The EPA is also requesting comment on, the options of changing the form to apply to a three-year period as well as retaining a single-year period. We solicit comments on these ranges of averaging times and forms as well as views and related rationales that might support alternative options.

c. Level

At this time, the Agency is interested in soliciting comment on a wide range of possible options for consideration when making a proposed decision on the level of the primary Pb NAAQS. These policy options range from lowering the standard, to the levels recommended by CASAC and the OAQPS Staff paper or lower, as well as on other alternative levels, up to and including the current level, and the rationale upon which such views are based.

i. Evidence-Based Considerations

The EPA recognizes that there are several aspects to the body of epidemiological evidence available in this review that complicate efforts to translate the evidence into the basis for selecting an appropriate level for an ambient air quality standard. As an initial matter, as summarized above and discussed in greater depth in the Criteria Document (CD, Sections 4.3 and 6.1.3), the epidemiological evidence that associates Pb exposures with health effects uses blood Pb as the dose metric, not ambient air concentrations. Further, for the health effects receiving greatest emphasis in this review (neurological effects on the developing nervous system), no threshold levels can be discerned from the evidence. As was recognized at the time of the last review, estimating a threshold for toxic effects of Pb on the central nervous system entails a number of difficulties (CD, pp. 6–10 to 6–11). The task is made still more complex by support in the evidence for a nonlinear rather than linear relationship of blood Pb with neurocognitive decrement, with greater risk of decrement-associated changes in blood Pb at the lower levels of blood Pb in the exposed population (Section 3.3.7; CD, Section 6.2.13).

In considering how this evidence can help inform the selection of the level of the standard, EPA will consider how the framework applied in the establishment of the standard may be applied to the much expanded body of evidence that is now available. This consideration builds upon the evidence-based considerations of the adequacy of the current standard, discussed above in Section III.C.3.a.

As noted above, this review focuses on young children as the key sensitive population for Pb exposures, the same population identified in 1978. In this sensitive population, the current evidence demonstrates the occurrence of adverse health effects, including those on the developing nervous system, associated with blood Pb levels extending well below 10 μg/dL to 5 μg/dL and possibly lower. Some studies indicate Pb effects on intellectual attainment of young children at blood Pb levels ranging from 2 to 8 μg/dL (CD, Sections 6.2, 8.4.2 and 8.4.2.6), including findings of similar Pb-related effects in a study of a nationally representative sample of children in which the mean blood Pb level was 1.9 μg/dL (CD, pp. 6–31 to 6–32; Lanphear et al., 2000).[69] Further, the current evidence does not indicate a threshold for the more sensitive health endpoints such as adverse effects on the

[69] These findings include significant associations in the study sample subsets of children with blood Pb levels less than 10 μg/dL, less than 7.5 μg/dL and less than 5 μg/dL. A positive, but not statistically significant association, was observed in the less than 2.5 μg/dL subset, although the effect estimate for this subset was largest among all the subsets. The lack of statistical significance for this subset may be due to the smaller sample size of this subset which would lead to lower statistical power.

developing nervous system (CD, pp. 5–71 to 5–74 and Section 6.2.13). This differs from the Agency's inference in the 1978 rulemaking of a threshold of 40 μg/dL blood Pb for effects of Pb considered clearly adverse to health at that time, i.e., impairment of heme synthesis and other effects which result in anemia. Thus, the level of Pb in children's blood associated with adverse health effect has dropped substantially.

As when the standard was set in 1978, EPA recognizes that there remain today contributions to blood Pb levels from nonair sources. As discussed above, these contributions have been reduced since 1978, with estimates of reduction in the dietary component of 70 to 95 percent (CD, Section 3.4). The evidence is limited with regard to the aggregate reduction since 1978 of all nonair sources to blood Pb. However, the available evidence and some preliminary analysis led CASAC to recommend consideration of 1.0 to 1.4 μg/dL or lower as an estimate of the nonair component of blood Pb (Henderson, 2007a). The value of 1.4 μg/dL was the mean blood Pb level derived from a simulation of current nonair exposures using the IEUBK model (Henderson, 2007a, pp. F–60 to F–61). These current estimates are roughly an order of magnitude lower than the value of 12 μg/dL that was used in setting the 1978 standard.

Regarding the relationship between air and blood, while the evidence demonstrates that airborne Pb influences blood Pb concentrations through a combination of inhalation and ingestion exposure pathways, estimates of the precise quantitative relationship (i.e., air-to-blood ratio) available in the evidence vary (USEPA, 1986a; Brunekreef, 1984) and there is uncertainty as to the values that pertain to current exposures. Studies summarized in the 1986 Criteria Document typically yield estimates in the range of 1:3 to 1:5, with some as high as 1:10 or higher (USEPA, 1986a; Brunekreef, 1984). Findings in a more recent study identified in the Criteria Document of blood Pb response to reduced air concentrations indicate a ratio on the order of 1:7 (CD, pp. 3–23 to 3–24; Hilts et al., 2003). A value of 1:5 has been used by the World Health Organization (2000). These ratios are appreciably higher than the ratio of 1:2 that was used in setting the 1978 standard.

A standard setting approach being considered is to apply the framework relied upon in setting the standard in 1978 to the currently available information. In applying that framework, however, EPA recognizes that today ''there is no level of Pb exposure that can yet be identified, with confidence, as clearly not being associated with some risk of deleterious health effects'' (CD, p. 8–63). However, there is increasing uncertainty with regard to the magnitude and type of effects at levels below 5 μg/dL [70]. This is in contrast to the situation in 1978 when the Agency judged that the maximum safe blood Pb level (geometric mean) for a population of young children was 15 μg/dL based on its conclusion that the maximum safe blood Pb level of an individual child was 30 μg/dL. [71]

In illustrating the application of the 1978 framework, two blood Pb levels are used here for illustrative purposes. A level of 2 μg/dL was used because it represents some of the lowest population levels associated with adverse effect in the current evidence (e.g., CD, p. E–9; Lanphear et al., 2000). In addition, a level of 5 μg/dL has been used. This level has been associated with adverse health effects with a higher degree of certainty in the published literature, and is a level where cognitive deficits were identified with statistical significance (Lanphear et al., 2000).

Using a blood Pb target of 2 μg/dL as a substitute for the 1978 target of 15 μg/dL for the child population geometric mean, then subtracting 1 to 1.4 μg/dL for background, yields 0.6 to 1 μg/dL as a target for the air contribution to blood Pb. Dividing the air target by 5, consistent with currently available information on the ratio of air Pb to blood Pb, yields a potential standard level of 0.1 to 0.2 μg/m^3. Alternatively, using the same approach substituting 5 μg/dL for the child population geometric mean and subtracting 1 to 1.4 μg/dL for background, yields 3.6 to 4 μg/dL as a target for the air contribution to blood Pb. Dividing the air target by 5, consistent with currently available information on the ratio of air Pb to blood Pb, yields a level of 0.7 to 0.8 μg/m^3. Similarly, substitution of other blood Pb targets would result in still other levels.

In light of the current CDC blood Pb ''level of concern'' of 10 μg/dL, some might consider a blood Pb value of 10 μg/dL as a target blood Pb value for this calculation to derive a level for the primary standard. EPA notes, however, that the CDC does not consider this level of concern as a safe blood Pb level or one without evidence of adverse effects (CDC, 2005a). Rather, it is used by CDC to identify children with elevated blood Pb levels for follow-up activities [72] at the individual level and to trigger communitywide prevention activities (CDC, 2005a). The level of concern has been frequently misinterpreted as a definitive toxicologic threshold (CDC, 2005a). As summarized in Section III.A and above, and as described in detail in the Criteria Document, various adverse effects have been associated with children's blood Pb levels below 10 μg/dL. For example, the Criteria Document states that the currently available toxicologic and epidemiologic information ''includes assessment of new evidence substantiating risks of deleterious effects on certain health endpoints beng induced by distinctly lower than previously demonstrated Pb exposures indexed by blood-Pb levels extending well below 10 μg/dL in children and/or adults'' (CD, p. 8–25). Accordingly, EPA has not used a mean or an individual target blood Pb value of 10 μg/dL as the basis for an illustrative example of deriving a standard that is intended to protect public health with an adequate margin of safety. In recognition of differing views on this subject, however, we solicit comment on the appropriateness of using a mean or individual target blood Pb value of 10 μg/dL as the foundation for deriving a level for the primary Pb standard.

The above examples focus on the mean target blood Pb level for the sensitive population by way of illustrating application of the 1978 framework. The EPA solicits comment on mean target blood Pb levels as well as other factors that would be important in applying the 1978 framework. For example, the distribution of blood Pb levels within the sensitive population is an important aspect of the 1978 framework. When the standard was set in 1978, the Agency stated that the population mean, measured as the geometric mean, must be 15 μg/dL in order to ensure that 99.5 percent of children in the United States would

[70] As stated in the Criteria Document ''Some recent studies of Pb neurotoxicity in infants have observed effects at population average blood-Pb levels of only 1 or 2 μg/dL; and some cardiovascular, renal, and immune outcomes have been reported at blood-Pb levels below 5 μg/dL.'' (CD, p. E–16).

[71] More specifically, the 1978 target of 15 μg/dL was described as the geometric mean level associated with a 99.5 percentile of 30 μg/dL which the Agency described as a ''safe level'' for an individual child (43 FR 46247–49).

[72] Activities such as taking an environmental history, educating parents about Pb and conducting follow-up blood Pb monitoring were among those suggested for children with blood Pb levels greater than or equal to 10 μg/dL (CDC, 2005a). Recently, CDC's Advisory Committee on Childhood Lead Poisoning Prevention has also provided information and recommendations relevant to clinical management of children with blood Pb levels below 10 μg/dL (ACCLPP, 2007).

have a blood Pb level below 30 μg/dL, which was identified as the maximum safe blood Pb level for individual children based on the information available at that time (43 FR 46252). Target values for the mean of the population necessarily imply higher values for individuals associated with the upper percentiles of the blood Pb distribution. For example, the 2001–2002 NHANES information indicates that a geometric mean blood level of 1.7 μg/dL for children nationally, aged 1–5 years, is associated with a 95th percentile blood Pb level of 5.8 μg/dL (CDC, 2005b).

Additionally, the nonair (background) contribution to total blood Pb is an important input to the framework and we solicit comment on the definition and appropriate values for this parameter.[73] In the assessment presented in this notice, contributions attributed to ''recent air'' and to ''recent plus past air'' may include some Pb from the historic use of Pb in paint and gasoline and other sources.

Further, there are a range of estimates for the air-to-blood ratio that include estimates higher than that used in 1978 when the standard was set. We solicit comment and supporting information regarding the air-to-blood ratio and differences in the available estimates. All of these factors are important in applying a framework such as that used in 1978, and we solicit comment, along with supporting information, on all of these factors.

Beyond the 1978 framework illustrated above, EPA recognizes a variety of approaches can be used in translating the current evidence to a level for the standard. With this notice, EPA solicits comment on the 1978 standard setting framework and on alternate approaches and the factors that are relevant to those approaches.

ii. Exposure- and Risk-Based Considerations

To inform judgments about a range of levels for the standard that could provide an appropriate degree of public health protection, in addition to considering the health effects evidence, EPA will also consider the quantitative estimates of exposure and health risks attributable to policy-relevant Pb upon meeting specific alternative levels of alternative Pb standards and the uncertainties in the estimated exposures and risks, as discussed above in Section III.B. As discussed above, the risk assessment conducted by EPA is based on exposures that have been estimated for children of less than 7 years of age in six case studies. The assessment estimated the risk of adverse neurocognitive effects in terms of IQ decrements associated with total and policy-relevant Pb exposures, including incidence of different levels of IQ loss in three of the six case studies. In so doing, EPA is mindful of the important uncertainties and limitations that are associated with the exposure and risk assessments. For example, with regard to the risk assessment important uncertainties include those related to estimation of blood Pb concentration-response functions, particularly for blood Pb concentrations at and below the lower end of those represented in the epidemiological studies characterized in the Criteria Document.

EPA also recognizes important limitations in the design of, and data and methods employed in, the exposure and risk analyses. For example, the available monitoring data for Pb, relied upon for estimating current conditions for the urban case studies is quite limited, in that monitors are not located near some of the larger known Pb sources, which provides the potential for underestimation of current conditions, and there is uncertainty about the proximity of existing monitors to other Pb sources potentially influencing exposures, such as old urban roadways and areas where housing with Pb paint has been demolished. All of these limitations raise uncertainty as to whether these data adequately capture the magnitude of ambient Pb concentrations to which the target population is currently exposed. Additionally, EPA recognizes that there is not sufficient information available to evaluate all relevant sensitive groups (e.g., adults with chronic kidney disease) or all Pb-related adverse health effects (e.g., neurological effects other than IQ decrement, immune system effects, adult cardiovascular or renal effects), and the scope of our analyses was generally limited to estimating exposures and risks in six case studies intended to illustrate a variety of Pb exposure situations across the U.S., with three of them focused on specific areas in three cities. As noted above, however, coordinated intensive efforts over the last 20 years have yielded a substantial decline in blood Pb levels in the United States. Recent NHANES data (2003–2004) yield blood lead level estimates for children age 1 to 5 years of 1.6 μg/dL (median) and 3.9 μg/dL (90th percentile). These median and 90th percentile national-level data are lower than modeled values generated for the three location-specific urban case studies current conditions scenarios (see footnote 39). It is noted, however, that the urban case studies and the NHANES study are likely to differ with regard to factors related to Pb exposure, including ambient air levels.

EPA also recognizes limitations in our ability to characterize the contribution of policy-relevant Pb to total Pb exposure and Pb-related health risk. For example, given various limitations of our modeling tools, blood Pb levels associated with air-related exposure pathways and current levels of Pb emitted to the air (including via resuspension) may fall between the estimates for ''recent air'' and those for ''recent'' plus ''past air''. However, there are limitations associated with the indoor dust Pb models that affect our ability to discern differences in the recent air category among different alternate air quality scenarios and both categories may include Pb in soil and dust from the historical use of Pb in paint.

With these limitations in mind, EPA will consider the estimates of IQ loss associated with policy-relevant Pb at air Pb concentrations near those currently occurring in urban areas as illustrated by conditions in the three cities chosen for the location-specific urban case studies, e.g., 0.09 to 0.36 μg/m^3 as a maximum quarterly average or 0.17 to 0.56 μg/m^3 as a maximum monthly average. Recognizing, as described above, that estimates of IQ loss associated with air-related exposure pathways and current levels of Pb emitted to the air (including via resuspension) may fall between the estimates for ''recent air'' and those for ''recent'' plus ''past air'', EPA will consider ranges reflecting those two categories. Further, as noted above, we will focus on risk estimates derived using the LLL (log-linear with low exposure linearization) concentration-response function.

The ambient air Pb related IQ loss (based on LLL function) associated with the median IQ loss for current conditions in the three location-specific case studies (see Tables 5–9 and 5–10 of the Risk Assessment Report)—estimated to fall between the estimates for recent air (0.6–0.7 points) and those for recent plus past air (2.9 points)—appears to be of a magnitude in the range that CASAC considered to be highly significant from a public health perspective (e.g., a

[73] As noted above, in 2001 when establishing standards for lead-based paint hazards in most pre-1978 housing and child-occupied facilities (66 FR 1206), the Agency grappled with the uncertainties in what environmental levels of historic Pb in soil and dust (from the historical use of Pb in paint and gasoline) in which specific medium may cause blood Pb levels that are associated with adverse effects (see Section II.C).

population IQ loss of 1–2 points). Comparable estimates for the current conditions scenarios in the general urban case study are still more significant with estimates for the general urban case study ranging from 1.3–1.8 for recent air and 3.2–3.6 for recent plus past air. For the primary Pb smelter case study, in which air quality exceeds the current NAAQS, IQ loss reductions in the recent plus past air category associated with the alternate NAAQS levels of 0.2 and 0.5 μg/m³ ranging from 4.0 to 4.9 points IQ loss for the subarea.

Focusing only on the recent air estimates, estimates of IQ loss (based on the LLL function) associated with policy-relevant Pb at the 95th percentile of population total IQ loss are greater than 1 point for all current conditions scenarios in all three urban case studies for which the lowest air Pb concentrations are 0.09 μg/m³ maximum quarterly average, and 0.17 μg/m³ maximum monthly average.

EPA will also consider the extent to which alternative standard levels below current conditions are estimated to reduce blood Pb levels and associated health risk in young children (Tables 4–1 through 4–4 in the Staff Paper), looking first to the estimates of total blood Pb. In the general urban case study, blood Pb levels for the median of the population associated with the lowest alternative NAAQS (0.02 μg/m³) are estimated to be reduced from levels in the two current conditions scenarios by 14% (0.3 μg/dL) and 24% (0.5 μg/dL), respectively. For the 95th percentile of the population, the estimated reductions are similar in terms of percentage, but are higher in absolute values (1.7 and 1.0 μg/dL). For the three location-specific urban case studies, median blood Pb estimates associated with the lowest alternative standard are reduced from those associated with current conditions by approximately 10% in the Chicago and Cleveland study areas and 6% in the Los Angeles study area; similar percent reductions are estimated at the 95th percentile total blood Pb. For the localized subarea of the primary Pb smelter case study, a 65% reduction in both median and 95th percentile blood Pb (3 and 8.1 μg/dL, respectively) is estimated for the lowest alternative NAAQS as compared to the current NAAQS.[74]

[74] This can be compared to reductions in blood Pb, for the primary Pb smelter case study subarea estimated to be associated with a change in the level from the current standard to the 0.2 μg/m³ level (either averaging time) which are approximately 45–50% for both the median and 95th percentile values.

EPA will also consider the extent to which specific levels of alternative Pb standards reduce the estimated risks in terms of IQ loss attributable to policy-relevant exposures to Pb (Tables 4–3 and 4–4 in the Staff Paper). For the general urban case study, estimated reductions in median Pb-related IQ loss associated with reduced exposures at the lowest alternative NAAQS level (0.02 μg/m³) were 0.5 and 0.7 points (LLL function) for the two current conditions scenarios. Reductions at the 95th percentile were of a similar magnitude. Among the three location-specific case study areas, estimated reductions in median Pb-related IQ loss associated with reduced exposures at the lowest alternate NAAQS as compared to current conditions range from 0.4 to 0.6 points for the high-end concentration-response function to 0.1 to 0.2 points for the low-end concentration-response functions, with estimates for the LLL function ranging from 0.2 to 0.3 points. The reduction at the 95th percentile, based on the LLL function, is 0.3–0.4 points. Reduced exposures associated with the lowest alternative NAAQS in the primary Pb smelter case study subarea as compared with the current NAAQS (which is not currently met by this area) were more substantial, ranging from 2.8 points at the median and 3 points at the 95th percentile (based on LLL function).

Based on estimated reductions in Pb-associated IQ loss discussed above, EPA observes that estimates for the 95th percentile of the population are quite similar to (for the LLL concentration-response function) or smaller (for the high- and low-end concentration-response functions) than those at the median for all case studies. This is because of the nonlinear relationship between IQ decrement and blood Pb level such that relatively smaller IQ decrement is associated with changes in blood Pb at higher blood Pb levels.

Reductions in air Pb concentrations from current conditions to meet the lower alternative NAAQS (0.02 and 0.05 μg/m³, maximum monthly mean) are estimated to reduce the number of children having Pb-related IQ loss greater than one point by one half to one percent in each of the three location-specific urban case studies. More specifically, within the three study areas this corresponds to a range of approximately 100 to 3,000 fewer children having total IQ loss greater than 1.0 for an alternative standard of 0.02 μg/m³, maximum monthly mean. Further, just meeting the lowest alternative standard in these three study areas is estimated to reduce the number of children having an IQ loss greater than seven points by one to two percent. This corresponds to a range of approximately 350 (for the Cleveland study area) up to 8,000 (for the Chicago study area) fewer children with total Pb-related IQ loss greater than 7.0.

As discussed above, CASAC considered a population IQ loss of 1–2 points to be highly significant from a public health perspective. Estimates of IQ loss associated with policy-relevant Pb are of a magnitude that appears to fall near or within this range for air quality scenarios involving levels at or above 0.09 μg/m³, maximum quarterly mean, or 0.17 μg/m³, maximum monthly mean. Estimated reductions in risk associated with reducing air Pb concentrations from current conditions (in the urban case studies) to the two lower alternative levels evaluated (0.02 and 0.05 μg/m³) appear to range from a few tenths to just below one IQ point (for the LLL concentration-response function) (and up to 1.5 IQ points for the highest concentration-response function). Based on estimated changes in risk across the population associated with the two lower alternative levels (as compared to current conditions), reductions in the number of children with total Pb-related IQ loss greater than 1 or greater than 7 are estimated to be on the order of hundreds to thousands of children in the three location-specific urban case studies.

In considering the exposure and risk information with regard to a level for the standard, EPA notes that at the time the standard was set, the Agency recognized a particular blood Pb level as ''safe''. Today, current evidence does not support the recognition of a ''safe'' level. This is generally reflected in the concentration-response functions used in the risk assessment and in CASAC recommendations on these functions with regard to a lack of a threshold. EPA will therefore consider a different approach in this review.

In considering these risk estimates, EPA is mindful of CASAC's recommendation regarding the public health significance of a population loss of 1 to 2 IQ points, the significant implications of potential shifts in the distribution of IQ for the exposed population, and other unquantified Pb-related health effects. Based on these factors and the range of estimates summarized above for IQ loss associated with policy-relevant Pb for the current conditions scenarios of the location-specific case studies, we recognize that some may consider reducing the NAAQS as important from a public health perspective (from air-related ambient Pb) relative to that afforded by the current standard.

In considering the public health significance of IQ loss beyond CASAC's recommendation on this issue, we note that some may consider that any IQ loss at the population level is of potential public health significance. That is, there is no amount of IQ loss at the population level that is clearly recognized as being of no importance from a public health perspective. On the other hand, we also recognize that some may hold different views. Thus, the magnitude of IQ loss that could be allowed by a standard that protects public health with an adequate margin of safety is clearly a public health policy judgment to be made by the Administrator.

In considering the magnitudes of IQ loss estimated in our assessment for the lowest alternative levels considered, EPA will focus on total IQ loss and on the contribution to total IQ loss from policy-relevant pathways. In so doing, we recognize that nonair contributions to total Pb-related IQ loss are estimated to reach and exceed an IQ loss of 1–2 points, and we also recognize that air Pb contributions are generally of a much smaller magnitude. Thus, we recognize that it may be appropriate to consider smaller estimates of IQ loss from air Pb contributions (e.g., less than 1 point IQ loss) in identifying the appropriate target for the policy-relevant component.

Placing weight on incremental changes in policy-relevant Pb-related IQ loss of less than one point IQ would lead to consideration of the lower standard levels evaluated in the risk assessment as part of a judgment as to what standard would protect public health with an adequate margin of safety. EPA recognizes, however, the significant uncertainties in the quantitative risk estimates and that uncertainty in the estimates increases with increasing difference of the air quality scenarios from current conditions. Thus, to the extent that incremental exposure reductions achieved through lowering the NAAQS might contribute to incremental reductions in children's blood Pb and to associated reductions in health effects, consideration of NAAQS levels below 0.1 μg/m^3 (e.g., the lower levels included in the risk assessment of 0.02 and 0.05 μg/m^3) may be appropriate. On the other hand, to the extent that the uncertainties and limitations in the exposure and risk assessments are judged to be so great as to prevent meaningful conclusions from being drawn for these low alternative standard levels, consideration of such low levels may not be appropriate.

If the policy goal for the Pb NAAQS was to be defined, for example, so as to provide protection that limited estimates of IQ loss from policy-relevant exposures to no more than 1–2 points IQ loss at the population-level, EPA notes that standard levels in the range of 0.1 to 0.2 μg/m^3 may achieve that goal. We also note that even with lower levels of the standard evaluated, while the range of policy-relevant IQ loss estimates is lower, the upper end of the range still extends up to and in some cases above 1 point IQ loss. We note, however, appreciably greater uncertainty associated with these estimates that increases with increasing difference of the alternative standards from current conditions.

Alternatively, if the policy goal was to be defined so as to provide somewhat greater public health protection by limiting the air-related component of risk to somewhat less than 1 point IQ loss at the population level, this would suggest greater consideration for standards in the lower part of the range evaluated (0.02–0.05 μg/m^3). Such a goal might reflect recognition that nonair sources, in and of themselves, are estimated to contribute 1–2 points or more of IQ loss, such that the incremental risk for policy-relevant Pb is adding to a level of total Pb exposure that is already in a range that can be reasonably judged to be highly significant from a public health perspective. We note, however that considering standards in this lower range places greater weight on the more highly uncertain risk estimates and thus would be more precautionary in nature.

iii. CASAC Advice and Recommendations

Beyond the evidence- and risk/exposure-based information discussed above, EPA's consideration of the level for the NAAQS will also take into account the advice and recommendations of CASAC, based on their review of the Criteria Document and drafts of the Staff Paper and the related technical support document, as well as comments from the public on drafts of the Staff Paper and related technical support document. Public comments pertaining to the level of the standard recommended appreciable reductions in the level, e.g., setting it at 0.2 μg/m^3 or less.

In their advice to the Agency during this review CASAC has recognized the importance of both the health effects evidence and the exposure and risk information in selecting the level for the standard (Henderson, 2007a,b). In two separate letters, CASAC has stated that it is the unanimous judgement of the CASAC Lead Panel that the primary NAAQS should be ''substantially lowered'' to ''a level of about 0.2 μg/m^3 or less'', reflecting their view of the health effects evidence (Henderson, 2007a,b). In their March 2007 letter conveying comments on the pilot phase risk assessment, CASAC based their recommendation as to level on consideration of the health effects evidence they provided initial recommendations that the level should be substantially lower, reflecting their view of the evidence itself.

The CASAC Pb Panel also provided advice regarding how the Agency should consider IQ loss estimates derived from the risk assessment in selecting a level for the standard. The Panel stated that they consider a population loss of 1–2 IQ points to be ''highly significant from a public health perspective.'' Further they recommended that ''the primary Pb standard should be set so as to protect 99.5% of the population from exceeding that IQ loss.'' The Agency anticipates further advice from CASAC with regard to level at the time of their review of this ANPR.

iv. Policy Options

In considering alternative levels of the primary Pb standard, EPA will consider the health effects evidence and the exposure and risk assessment, as well as the important uncertainties and limitations in the evidence and the assessment results. To help inform public health policy judgments, we specifically solicit comment on levels of IQ loss considered to be significant from a public health perspective. Additionally, we solicit comment on the magnitude of IQ loss associated with exposures to ambient Pb by the pathways categorized as ''recent air'' in the risk assessment described in this notice that are considered to be significant from a public health perspective. We also solicit comment on the approach of adopting a public health policy goal of limiting policy-relevant air exposure such that the incremental blood Pb level (and the associated resulting IQ loss) are below a specified level (e.g., to a magnitude of 0.5 or 1 μg/dL, or other alternative values).

The EPA takes note of the views of CASAC on these matters, summarized above, the conclusions and recommendations in the OAQPS Staff Paper,[75] and the views of public commenters. We also note other views,

[75] The OAQPS Staff Paper recommends consideration of a range of alternative standard levels from as high as 0.1 to 0.2 μg/m^3 down to the lower levels evaluated in the risk assessment of 0.02 to 0.05 μg/m^3.

including retaining the current standard level or a range of alternative levels that includes the upper end of the alternative standards considered in the risk assessment (i.e., 0.5 μg/m³ as a maximum monthly average). The EPA recognizes that there may be differing interpretations of the available evidence, the public health significance of various changes in population IQ loss, and various aspects of the evidence and exposure and risk assessments, including important uncertainties and limitations associated with the evidence and assessments. Thus, EPA solicits comment on the range of alternative standard levels identified above, as well as on other alternative levels, up to and including the current level, and the rationale upon which such views are based.

IV. The Secondary Standard

This section presents information relevant to the review of the secondary Pb NAAQS, including information on the welfare effects associated with Pb exposures, results of the screening-level ecological risk assessment, and considerations related to evaluating the adequacy of the current standard and alternative standards that might be appropriate for the Administrator to consider.

A. Welfare Effects Information

Welfare effects addressed by the secondary NAAQS include, but are not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being. A qualitative assessment of welfare effects evidence related to ambient Pb is summarized in this section, drawing from Chapter 6 of the Staff Paper. The presentation here first recognizes several key aspects of the welfare evidence for Pb. Lead is persistent in the environment and accumulates in soils, aquatic systems (including sediments), and some biological tissues of plants, animals and other organisms, thereby providing long-term, multipathway exposures to organisms and ecosystems. Additionally, EPA recognizes that there have been a number of uses of Pb, especially as an ingredient in automobile fuel but also in other products such as paint, lead-acid batteries, and some pesticides, which have significantly contributed to widespread increases in Pb concentrations in the environment, a portion of which remains today (e.g., CD, Chapters 2 and 3).

Ecosystems near smelters, mines and other industrial sources of Pb have demonstrated a wide variety of adverse effects including decreases in species diversity, loss of vegetation, changes to community composition, decreased growth of vegetation, and increased number of invasive species. Apportioning these effects between Pb and other stressors is complicated because these point sources also emit a wide variety of other heavy metals and sulfur dioxide which may cause toxic effects. There are no field studies which have investigated effects of Pb additions alone but some studies near large point sources of Pb have found significantly reduced species composition and altered community structures. While these effects are significant, they are spatially limited: The majority of contamination occurs within 20 to 50 km of the emission source (CD, AX7.1.4.2).

By far, the majority of Pb found in terrestrial ecosystems was deposited in the past during the use of Pb additives in gasoline. This gasoline-derived Pb was emitted predominantly in small size particles which were widely dispersed and transported across large distances. Many sites receiving Pb predominantly through such long-range transport have accumulated large amounts of Pb in soils (CD, p.l AX7–98). There is little evidence that terrestrial sites exposed as a result of this long range transport of Pb have experienced significant effects on ecosystem structure or function (CD, AX7.1.4.2, p. AX7–98). Strong complexation of Pb by soil organic matter may explain why few ecological effects have been observed (CD, p. AX7–98). Studies have shown decreasing levels of Pb in vegetation which seems to correlate with decreases in atmospheric deposition of Pb resulting from the removal of Pb additives to gasoline (CD, AX7.1.4.2).

Terrestrial ecosystems remain primarily sinks for Pb but amounts retained in various soil layers vary based on forest type, climate, and litter cycling (CD, Section 7.1). Once in the soil, the migration and distribution of Pb is controlled by a multitude of factors including pH, precipitation, litter composition, and other factors which govern the rate at which Pb is bound to organic materials in the soil (CD, Section 2.3.5).

Like most metals the solubility of Pb is increased at lower pH. However, the reduction of pH may in turn decrease the solubility of dissolved organic material (DOM). Given the close association between Pb mobility and complexation with DOM, a reduced pH does not necessarily lead to increased movement of Pb through terrestrial systems and into surface waters. In areas with moderately acidic soil (i.e., pH of 4.5 to 5.5) and abundant DOM, there is no appreciable increase in the movement of Pb into surface waters compared to those areas with neutral soils (i.e., pH of approximately 7.0). This appears to support the theory that the movement of Pb in soils is limited by the solubilization and transport of DOM. In sandy soils without abundant DOM, moderate acidification appears likely to increase outputs of Pb to surface waters (CD, AX7.1.4.1).

Lead exists in the environment in various forms which vary widely in their ability to cause adverse effects on ecosystems and organisms. Current levels of Pb in soil also vary widely depending on the source of Pb but in all ecosystems Pb concentrations exceed natural background levels. The deposition of gasoline-derived Pb into forest soils has produced a legacy of slow moving Pb that remains bound to organic materials despite the removal of Pb from most fuels and the resulting dramatic reductions in overall deposition rates. For areas influenced by point sources of air Pb, concentrations of Pb in soil may exceed by many orders of magnitude the concentrations which are considered harmful to laboratory organisms. Adverse effects associated with Pb include neurological, physiological and behavioral effects which may influence ecosystem structure and functioning. Ecological soil screening levels (Eco-SSLs) have been developed for Superfund site characterizations to indicate concentrations of Pb in soils below which no adverse effects are expected to plants, soil invertebrates, birds and mammals. Values like these may be used to identify areas in which there is the potential for adverse effects to any or all of these receptors based on current concentrations of Pb in soils.

Atmospheric Pb enters aquatic ecosystems primarily through the erosion and runoff of soils containing Pb and deposition (wet and dry). While overall deposition rates of atmospheric Pb have decreased dramatically since the removal of Pb additives from gasoline, Pb continues to accumulate and may be re-exposed in sediments and water bodies throughout the United States (CD, Section 2.3.6).

Several physical and chemical factors govern the fate and bioavailability of Pb in aquatic systems. A significant portion of Pb remains bound to suspended particulate matter in the water column and eventually settles into the substrate. Species, pH, salinity, temperature,

turbulence and other factors govern the bioavailability of Pb in surface waters (CD, Section 7.2.2).

Lead exists in the aquatic environment in various forms and under various chemical and physical parameters which determine the ability of Pb to cause adverse effects either from dissolved Pb in the water column or Pb in sediment. Current levels of Pb in water and sediment also vary widely depending on the source of Pb. Conditions exist in which adverse effects to organisms and thereby ecosystems may be anticipated given experimental results. It is unlikely that dissolved Pb in surface water constitutes a threat to ecosystems that are not directly influenced by point sources. For Pb in sediment, the evidence is less clear. It is likely that some areas with long-term historical deposition of Pb to sediment from a variety of sources as well as areas influenced by point sources have the potential for adverse effects to aquatic communities. The long residence time of Pb in sediment and its ability to be resuspended by turbulence make Pb likely to be a factor for the foreseeable future. Criteria have been developed to indicate concentrations of Pb in water and sediment below which no adverse effects are expected to aquatic organisms. These values may be used to identify areas in which there is the potential for adverse effects to receptors based on current concentrations of Pb in water and sediment.

B. Screening Level Ecological Risk Assessment

This section presents a brief summary of the screening-level ecological risk assessment conducted by EPA for this review. The assessment is described in detail in *Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas, Pilot Phase* (ICF, 2006). Funding constraints have precluded performance of a full-scale ecological risk assessment. The discussion here is focused on the screening level assessment performed in the pilot phase (ICF, 2006) and takes into consideration CASAC recommendations with regard to interpretation of this assessment (Henderson, 2007a, b). The following summary focuses on key features of the approach used in the assessment and presents only a brief summary of the results of the assessment. A complete presentation of results is provided in the pilot phase Risk Assessment Report (ICF, 2006) and summarized in Chapter 6 of the Staff Paper.

1. Design Aspects of Assessment and Associated Uncertainties

The screening level risk assessment involved several location-specific case studies and a national-scale surface water and sediment screen. The case studies included areas surrounding a primary Pb smelter and a secondary Pb smelter, as well as a location near a nonurban roadway. An additional case study for an ecologically vulnerable location was identified and described (ICF, 2006), but resource constraints have precluded risk analysis for this location.

The case study analyses were designed to estimate the potential for ecological risks associated with exposures to Pb emitted into ambient air. Soil, surface water, and/or sediment concentrations were estimated from available monitoring data or modeling analysis, and then compared to ecological screening benchmarks to assess the potential for ecological impacts from Pb that was emitted into the air. Results of these comparisons are not definitive estimates of risk, but rather serve to identify those locations at which there is the greatest likelihood for adverse effect. Similarly, the national-scale screening assessment evaluated surface water and sediment monitoring locations across the United States for the potential for ecological impacts associated with atmospheric deposition of Pb. The reader is referred to the pilot phase Risk Assessment Report (ICF, 2006) for details on the use of this information and models in the screening assessment.

The measures of exposure for these analyses are total Pb concentrations in soil, dissolved Pb concentrations in fresh surface waters (water column), and total Pb concentrations in freshwater sediments. The hazard quotient (HQ) approach was then used to compare Pb media concentrations with ecological screening values. The exposure concentrations were estimated for the three case studies and the national-scale screening analyses as described below:

- For the primary Pb smelter case study, measured concentrations of total Pb in soil, dissolved Pb in surface waters, and total Pb in sediment were used to develop point estimates for sampling clusters thought to be associated with atmospheric Pb deposition, rather than Pb associated with nonair sources, such as runoff from waste storage piles.
- For the secondary Pb smelter case study, concentrations of Pb in soil were estimated using fate and transport modeling based on EPA's MPE methodology (USEPA, 1998) and data available from similar locations.
- For the near roadway nonurban case study, measured soil concentration data collected from two interstate sampling locations, one with fairly high-density development (Corpus Christi, Texas) and another with medium-density development (Atlee, Virginia), were used to develop estimates of Pb in soils for each location.
- For the national-scale surface water and sediment screening analyses, measurements of dissolved Pb concentrations in surface water and total Pb in sediment for locations across the United States were compiled from available databases (USGS, 2004). Air emissions, surface water discharge, and land use data for the areas surrounding these locations were assessed to identify locations where atmospheric Pb deposition may be expected to contribute to potential ecological impacts. The exposure assessment focused on these locations.

The ecological screening values used in this assessment were developed from the Eco-SSLs methodology, EPA's recommended ambient water quality criteria, and sediment screening values developed by MacDonald and others (2000, 2003). Soil screening values were derived for this assessment using the Eco-SSL methodology with the toxicity reference values for Pb (USEPA, 2005d, 2005e) and consideration of the inputs on diet composition, food intake rates, incidental soil ingestion, and contaminant uptake by prey (details are presented in Section 7.1.3.1 and Appendix L, of ICF, 2006). Hardness-specific surface water screening values were calculated for each site based on EPA's recommended ambient water quality criteria for Pb (USEPA, 1984). For sediment screening values, the assessment relied on sediment ''threshold effect concentrations'' and ''probable effect concentrations'' developed by MacDonald *et al.* (2000). The methodology for these sediment criteria is described more fully in section 7.1.3.3 and Appendix M of the pilot phase Risk Assessment Report (ICF, 2006).

The HQ is calculated as the ratio of the media concentration to the ecotoxicity screening value, and represented by the following equation:

HQ = (estimated Pb media concentration) / (ecotoxicity screening value)

For each case study, HQ values were calculated for each location where either modeled or measured media concentrations were available. Separate soil HQ values were calculated for each

ecological receptor group for which an ecotoxicity screening value has been developed (i.e., birds, mammals, soil invertebrates, and plants). HQ values less than 1.0 suggest that Pb concentrations in a specific medium are unlikely to pose significant risks to ecological receptors. HQ values greater than 1.0 indicate that the expected exposure exceeds the ecotoxicity screening value and that there is a potential for adverse effects.

There are several uncertainties that apply across case studies noted below:

- The ecological risk screen is limited to specific case study locations and other locations for which dissolved Pb data were available and evaluated in the national-scale surface water and sediment screens. In identifying sites for inclusion in the assessment, efforts were made to ensure that the Pb exposures assessed were attributable to airborne Pb and not dominated by nonair sources. However, there is uncertainty as to whether other sources might have actually contributed to the Pb exposure estimates.
- A limitation to using the selected ecotoxicity screening values is that they might not be sufficient to identify risks to some threatened or endangered species or unusually sensitive aquatic ecosystems (e.g., CD, p. AX7–110).
- The methods and database from which the surface water screening values (i.e., the AWQC for Pb) were derived is somewhat dated. New data and approaches (e.g., use of pH as indicator of bioavailability) may now be available to estimated the aquatic toxicity of Pb (CD, Sections AX7.2.1.2 and AX7.2.1.3).
- No adjustments were made for sediment-specific characteristics that might affect the bioavailability of Pb in sediments in the derivation of the sediment quality criteria used for this ecological risk screen (CD, Sections 7.2.1 and AX7.2.1.4; Appendix M, ICF, 2006). Similarly, characteristics of soils for the case study locations were not evaluated for measures of bioavailability.
- Although the screening value for birds used in this analysis is based on reasonable estimates for diet composition and assimilation efficiency parameters, it was based on a conservative estimate of the relative bioavailability of Pb in soil and natural diets compared with water soluble Pb added to an experimental pellet diet (Appendix L, ICF, 2006).

2. Summary of Results

The following is a brief summary of key observations related to the results of the screening-level ecological risk assessment. A more complete discussion of the results is provided in Chapter 6 of the Staff Paper and the complete presentation of the assessment and results is presented in the pilot phase Risk Assessment Report (ICF, 2006).

- The national-scale screen of surface water data initial identified some 42 sample locations of which 15 were then identified as unrelated to mining sites and having water column levels of dissolved Pb that were greater than hardness adjusted chronic criteria for the protection of aquatic life (with one location having a HQ of 15), indicating a potential for adverse effect if concentrations were persistent over chronic periods. Acute criteria were not exceeded at any of these locations. The extent to which air emissions of Pb have contributed to these surface water Pb concentrations is unclear.
- In the national-scale screen of sediment data associated with the 15 surface water sites described above, threshold effect concentration-based HQs at nine of these sites exceeded 1.0. Additionally, HQs based on probable effect concentrations exceeded 1.0 at five of the sites, indicating probable adverse effects to sediment dwelling organisms. Thus, sediment Pb concentrations at some sites are high enough that there is a likelihood that they would cause adverse effects to sediment dwelling organisms. However, the contribution of air emissions to these concentrations is unknown.
- In the primary Pb smelter case study, all three of the soil sampling clusters (including the ''reference areas'') had HQs that exceeded 1.0 for birds. Samples from one cluster also had HQs greater than 1.0 for plants and mammals. The surface water sampling clusters all had measurements below the detection limit of 3.0 μg/L. However, three sediment sample clusters had HQs greater than 1.0. In summary, the concentrations of Pb in soil and sediments exceed screening values for these media indicating potential for adverse effects to terrestrial organisms (plants, birds and mammals) and to sediment dwelling organisms. While the contribution to these Pb concentrations from air as compared to nonair sources is not quantified, air emissions from this facility are substantial (see Appendix D, USEPA 2007b; ICF 2006).
- In the secondary Pb smelter case study, the soil concentrations, developed from soil data for similar locations, resulted in avian HQs greater than 1.0 for all distance intervals evaluated. The scaled soil concentrations within 1 km of the facility also showed HQs greater than 1.0 for plants, birds, and mammals. These estimates indicate a potential for adverse effect to those receptor groups.
- In the nonurban, near roadway case study, HQs for birds and mammals were greater than 1.0 at all but one of the distances from the road. Plant HQs were greater than 1.0 at the closest distance. In summary, HQs above one were estimated for plants, birds and mammals, indicating potential for adverse effect to these receptor groups.

C. Considerations in Review of the Standard

This section presents an integrative synthesis of information in the Criteria Document together with EPA analyses and evaluations. EPA notes that the final decision on retaining or revising the current secondary Pb standard is a public policy judgment to be made by the Administrator. The Administrator's final decision will draw upon scientific information and analyses about welfare effects, exposure and risks, as well as judgments about the appropriate response to the range of uncertainties that are inherent in the scientific evidence and analyses.

The NAAQS provisions of the Act require the Administrator to establish secondary standards that, in the judgment of the Administrator, are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. In so doing, the Administrator seeks to establish standards that are neither more nor less stringent than necessary for this purpose. The Act does not require that secondary standards be set to eliminate all risk of adverse welfare effects, but rather at a level requisite to protect public welfare from those effects that are judged by the Administrator to be adverse.

The following discussion starts with background information on the current standard (Section IV.C.1). The general approach for this current review is summarized in Section IV.C.2. Considerations with regard to the adequacy of the current standard are discussed in section IV.C.3, with evidence and exposure-risk-based considerations in subsections IV.C.3.a and b, respectively, followed by a summary of CASAC advice and recommendations (section IV.C.3.c) and, lastly, solicitation of comment on the broad range of policy options (section IV.C.3.d). Considerations with regard to elements of alternative standards are discussed in Section IV.C.4.

1. Background on the Current Standard

The current standard was set in 1978 to be identical to the primary standard (1.5 μg Pb/m^3, as a maximum arithmetic mean averaged over a calendar quarter), the basis for which is summarized in Section III.C.1. At the time the standard was set, the Agency concluded that the primary air quality standard would adequately protect against known and anticipated adverse effects on public welfare, as the Agency stated that it did not have evidence that a more restrictive secondary standard was justified. In the rationale for this conclusion, the Agency stated that the available evidence cited in the 1977 Criteria Document indicated that ''animals do not appear to be more susceptible to adverse effects from lead than man, nor do adverse effects in animals occur at lower levels of exposure than comparable effects in humans'' (43 FR 46256). The Agency recognized that Pb may be deposited on the leaves of plants and present a hazard to grazing animals. With regard to plants, the Agency stated that Pb is absorbed but not accumulated to any great extent by plants from soil, and that although some plants may be susceptible to Pb, it is generally in a form that is largely nonavailable to them. Further the Agency stated that there was no evidence indicating that ambient levels of Pb result in significant damage to manmade materials and Pb effects on visibility and climate are minimal.

The secondary standard was subsequently considered during the 1980s in development of the 1986 Criteria Document (USEPA, 1986a) and the 1990 Staff Paper (USEPA, 1990). In summarizing OAQPS staff conclusions and recommendations at that time, the 1990 Staff Paper stated that a qualitative assessment of available field studies and animal toxicological data suggested that ''domestic animals and wildlife are as susceptible to the effects of lead as laboratory animals used to investigate human lead toxicity risks.'' Further, the 1990 Staff Paper highlighted concerns over potential ecosystem effects of Pb due to its persistence, but concluded that pending development of a stronger database that more accurately quantifies ecological effects of different Pb concentrations, consideration should be given to retaining a secondary standard at or below the level of the then-current secondary standard of 1.5 μg/m^3.

2. Approach for Current Review

To evaluate whether it is appropriate to consider retaining the current secondary Pb standard, or whether consideration of revisions is appropriate, EPA is considering an approach in this review like that used in the Staff Paper that considers the evidence and risk analyses. This approach recognizes that the available welfare effects evidence generally reflects laboratory-based evidence of toxicological effects on specific organisms exposed to concentrations of Pb at which scientists generally agree that adverse effects are likely to occur. It is widely recognized, however, that environmental exposures are likely to be at lower concentrations and/or accompanied by significant confounding factors (e.g., other metals, acidification), which increases our uncertainty about the likelihood and magnitude of the organism and ecosystem response.

3. Adequacy of the Current Standard

a. Evidence-Based Considerations

In considering the welfare effects evidence with respect to the adequacy of the current standard, EPA will consider not only the array of evidence newly assessed in the Criteria Document but also that assessed in the 1986 Criteria Document and summarized in the 1990 Staff Paper. As discussed extensively in the latter two documents, there was a significantly improved characterization of environmental effects of Pb in the ten years after the Pb NAAQS was set. And, in the subsequent nearly 20 years, many additional studies on Pb effects in the environment are now available (2006 Criteria Document). Some of the more relevant aspects of the evidence available since the standard was set include the following:

- A more quantitative determination of the mobility, distribution, uptake, speciation, and fluxes of atmospherically delivered Pb in terrestrial ecosystems shows that the binding of Pb to organic materials in the soil slows its mobility through soil and may prevent uptake by plants (CD, Sections 7.1.2, 7.1.5, AX7.1.4.1, AX7.1.4.2, AX7.1.4.3 and AX7.1.2). Therefore, while atmospheric deposition of Pb has decreased, Pb may be more persistent in some ecosystems than others and may remain in the active zone of the soil, where exposure may occur, for decades (CD, Sections 7.1.2, AX7.1.2 and AX7.1.4.3).
- Plant toxicity may occur at lower levels than previously identified as determined by data considered in development of Eco-SSLs (CD, pp. 7–11 to 7–12, AX7–16 and Section AX7.1.3.2), although the range of reported soil Pb effect levels is large (tens to thousands of mg/kg soil).
- Avian and mammalian toxicity may occur at lower levels than those previously identified, although the range of Pb effect levels is large (<1 to >1,000 mg Pb/kg bw-day) (CD, p. 7–12, Section AX7.1.3.3).
- There is an expanded understanding of the fate and effects of Pb in aquatic ecosystems and of the distribution and concentrations of Pb in surface waters throughout the United States (CD, Section AX7.2.2).
- New methods for assessing the toxicity of metals to water column and sediment-dwelling organisms and data collection efforts (CD, Sections 7.2.1, 7.2.2, AX7.2.2, and AX7.2.2.2) have improved our understanding of Pb aquatic toxicity and findings include an indication that in some estuarine systems Pb deposited during historic usage of leaded gasoline may remain in surface sediments for decades. (CD, p. 7–23).
- A larger dataset of aquatic species assessed with regard to Pb toxicity, and findings of lower effect levels for previously untested species (CD, p. AX7–176 and Section AX7.2.4.3).
- Currently available studies have also shown effects on community structure, function and primary productivity, although some confounders (such as co-occurring pollutants) have not been well addressed (CD, Section AX7.1.4.2).
- Evidence in ecological research generally indicates the value of a critical loads approach; however, current information on Pb critical loads is lacking for many processes and interactions involving Pb in the environment and work is ongoing (CD, Section 7.3).

Given the full body of current evidence, despite wide variations in Pb concentrations in soils throughout the country, Pb concentrations are likely in excess of concentrations expected from geologic or other non-anthropogenic forces. In particular, the deposition of gasoline-derived Pb into forest soils has produced a legacy of slow moving Pb that remains bound to organic materials despite the removal of Pb from most fuels and the resulting dramatic reductions in overall deposition rates (CD, Section AX7.1.4.3). For areas influenced by point sources of air Pb that meet the current standard, concentrations of Pb in soil may exceed by many orders of magnitude the concentrations which are considered harmful to laboratory organisms (CD, Section 3.2 and AX7.1.2.3).

There are several difficulties in quantifying the role of current ambient Pb in the environment: Some Pb deposited before the standard was

enacted is still present in soils and sediments; historic Pb from gasoline continues to move slowly through systems as does current Pb derived from both air and nonair sources. Additionally, the evidence of adversity in natural systems is very sparse due in no small part to the difficulty in determining the effects of confounding factors such as multiple metals or factors influencing bioavailability in field studies. However, the evidence summarized above and in Section 4.2 of the Staff Paper and described in detail in the Criteria Document informs our understanding of Pb in the environment today and evidence of environmental Pb exposures of potential concern.

Conditions exist in which Pb-associated adverse effects to aquatic organisms and thereby ecosystems may be anticipated given experimental results. While the evidence does not indicate that dissolved Pb in surface water constitutes a threat to those ecosystems that are not directly influenced by point sources, the evidence regarding Pb in sediment is less clear (CD, Sections AX7.2.2.2.2 and AX7.2.4). It is likely that some areas with long term historical deposition of Pb to sediment from a variety of sources as well as areas influenced by point sources have the potential for adverse effects to aquatic communities. The long residence time of Pb in sediment and its ability to be resuspended by turbulence make Pb contamination likely to be a factor for the foreseeable future. Based on this information, the Staff Paper concluded that the evidence suggests that the environmental levels of Pb occurring under the current standard, set nearly thirty years ago, may pose risk of adverse environmental effect.

b. Risk-based Considerations

In addition to the evidence-based considerations described in the previous section, the screening level ecological risk assessment is informative, taking into account key limitations and uncertainties associated with the analyses.

The screening level risk assessment involved a comparison of estimates of environmental media concentrations of Pb to ecological screening levels to assess the potential for ecological impacts from Pb that was emitted into the air. Results of these comparisons are not considered to be definite predictors of risk, but rather serve to identify those locations at which there is greatest likelihood for adverse effect. Similarly, the national-scale screening assessment evaluated the potential for ecological impacts associated with the atmospheric deposition of Pb released into ambient air at surface water and sediment monitoring locations across the United States.

The ecological screening levels employed in the screening level risk assessment for different media are drawn from different sources. Consequently there are somewhat different limitations and uncertainties associated with each. In general, their use here recognizes their strength in identifying media concentrations with the potential for adverse effect and their relative nonspecificity regarding the magnitude of risk of adverse effect.

As discussed in the previous section, as a result of its persistence, Pb emitted in the past remains today in aquatic and terrestrial ecosystems of the United States. Consideration of the environmental risks associated with the current standard is complicated by the environmental burden associated with air Pb concentrations that exceeded the current standard, predominantly in the past.

Concentrations of Pb in soil and sediments associated with the primary Pb smelter case study exceeded screening values for those media indicating potential for adverse effect in terrestrial organisms (plants, birds and mammals) and in sediment dwelling organisms. While the contribution to these Pb concentrations from air as compared to nonair sources has not been quantified, air emissions from this facility are substantial (see Appendix D, USEPA 2007b; ICF 2006). Additionally, estimates of Pb concentration in soils associated with the nonurban near roadway case study and the secondary Pb smelter case study were also associated with HQs above 1 for plants, birds and mammals, indicating potential for adverse effect to those receptor groups. The industrial facility in the secondary Pb smelter case study is much younger than the primary Pb smelter and apparently became active less than ten years prior to the establishment of the current standard.

The national-scale screens, which are not focused on particular point source locations, indicate the ubiquitous nature of Pb in aquatic systems of the United States today. Further the magnitude of Pb concentrations in several aquatic systems exceeded screening values. In the case of the national-scale screen of surface water data, 15 locations were identified with water column levels of dissolved Pb that were greater than hardness adjusted chronic criteria for the protection of aquatic life (with one location having a HQ as high as 15), indicating a potential for adverse effect if concentrations were persistent over chronic periods. Further, sediment Pb concentrations at some sites in the national-scale screen were high enough that the likelihood that they would cause adverse effects to sediment dwelling organisms may be considered ''probable''.

A complicating factor in interpreting the findings for the national-scale screening assessments is the lack of clear apportionment of Pb contributions from air as compared to nonair sources, such as industrial and municipal discharges. While the contribution of air emissions to the elevated concentrations has not been quantified, documentation of historical trends in the sediments of many water bodies has illustrated the sizeable contribution that airborne Pb can have on aquatic systems (e.g., Section 2.8.1). This documentation also indicates the greatly reduced contribution in many systems as compared to decades ago (presumably reflecting the banning of Pb-additives from gasoline used by cars and trucks). However, the timeframe for removal of Pb from surface sediments into deeper sediment varies across systems, such that Pb remains available to biological organisms in some systems for much longer than in others (Section 2.8, CD, pages AX7–141 to AX7–145).

The case study locations included in the screening assessment, with the exception of the primary Pb smelter site, are currently meeting the current Pb standard, yet Pb occurs in some locations at concentrations, particularly in soil, and aquatic sediment above the screening levels, indicative of a potential for harm to some terrestrial and sediment dwelling organisms. While the role of airborne Pb in determining these Pb concentrations is unclear, the historical evidence indicates that airborne Pb can create such concentrations in sediments and soil. Further, environmental concentrations may be related to emissions prior to establishment of the current standard and such concentrations appear to indicate a potential for harm to ecological receptors today.

c. CASAC Advice and Recommendations

In the CASAC letter transmitting advice and recommendations pertaining to the review of the first draft Staff Paper and draft Pb Exposure and Risk Assessments, the CASAC Pb panel provided recommendations regarding the need for a Pb NAAQS, and the adequacy of the current Pb NAAQS, as well as comments on the draft documents. With regard to the need for a Pb NAAQS and adequacy of the current NAAQS, the CASAC letter said:

> The unanimous judgment of the Lead Panel is that lead should not be delisted as a criteria pollutant, as defined by the Clean Air Act, for which primary (public health based) and secondary (public welfare based) NAAQS are established, and that both the primary and secondary NAAQS should be substantially lowered.

Specifically with regard to the secondary NAAQS, the CASAC Pb Panel stated that the December 2006 draft documents presented ''compelling scientific evidence that current atmospheric Pb concentrations and deposition—combined with a large reservoir of historically deposited Pb in soils, sediments and surface waters—continue to cause adverse environmental effects in aquatic and/or terrestrial ecosystems, especially in the vicinity of large emissions sources.'' The Panel went on to state that ''These effects persist in some cases at locations where current airborne lead concentrations are below the level of the current primary and secondary lead standards'' and ''Thus, from an environmental perspective, there are convincing reasons to both retain lead as a regulated criteria air pollutant and to lower the level of the current secondary standard.''

In making this recommendation, the CASAC Pb Panel also cites the persistence of Pb in the environment, the possibility of some of the large amount of historically deposited Pb becoming resuspended by natural events, and the expectation that humans are not uniquely sensitive among the many animal and plant species in the environment. In summary, with regard to the recommended level of a revised secondary standard, the CASAC panel stated that:

> Therefore, at a minimum, the level of the secondary Lead NAAQS should be at least as low as the lowest-recommended primary lead standard.

CASAC provided further advice and recommendations on the Agency's consideration of the secondary standard in this review in their letter of September 2007 (Henderson, 2007b). In that letter they recognized the role of the secondary standard in influencing the long-term environmental burden of Pb and a need for environmental monitoring to assess the success of the standard in this role.

d. Policy Options

In considering the adequacy of the current secondary standard, EPA will consider, for reasons discussed above in III.C.3.d on the primary standard, whether it is appropriate to maintain a NAAQS for Pb or to retain Pb on the list of criteria pollutants. We take note of the views of CASAC, summarized above, the conclusions and recommendations in the OAQPS Staff Paper, and the views of public commenters on these questions. We recognize that there may be differing views on interpreting or weighing the available information. Thus, EPA solicits comment related to the questions of delisting and revocation.

In further considering the adequacy of the current standard in providing requisite protection from Pb-related adverse effects on public welfare, EPA will focus on the body of available evidence (briefly summarized above in Section IV.A). Depending on the interpretation, the available data and evidence, primarily qualitative, may suggest the potential for adverse environmental impacts under the current standard. Given the limited data on Pb effects in ecosystems, it is necessary to look at evidence of Pb effects on organisms and extrapolate to ecosystem effects. Therefore, taking into account the available evidence and current media concentrations in a wide range of areas, EPA seeks comment on whether the evidence suggests that adverse effects are occurring, particularly near point sources, under the current standard. While the role of current airborne emissions is difficult to apportion, it is conclusive that deposition of Pb from air sources is occurring and that this ambient Pb is likely to be persistent in the environment. Historically deposited Pb has persisted, although location-specific dynamics of Pb in soil result in differences in the timeframe during which Pb is retained in surface soils or sediments where it may be available to ecological receptors (USEPA, 2007b, section 2.3.3). EPA seeks comment on the role of deposition of Pb from current sources and the availability of this Pb to ecological receptors.

There is only very limited information available pertinent to assessing whether groups of organisms which influence ecosystem function are subject to similar effects as those in humans. The screening-level risk information, while limited and accompanied by various uncertainties, also suggests occurrences of environmental Pb concentrations existing under the current standard that could have adverse environmental effects. Environmental Pb levels today are associated with atmospheric Pb concentrations and deposition that have combined with a large reservoir of historically deposited Pb in environmental media.

The EPA takes note of the views of CASAC, summarized above, the conclusions and recommendations in the OAQPS Staff Paper, and views of public commenters on the adequacy of the current standard. EPA solicits comment on the adequacy of the current standard and the rationale upon which such views are based.

4. Elements of the Standard

The secondary standard is defined in terms of four basic elements: indicator, averaging time, level and form, which serve to define the standard and must be considered collectively in evaluating the welfare protection afforded by the standards. In considering a revision to the current standard, EPA will consider the four elements of the standard, the information available and advice and recommendations from CASAC regarding how the elements might be revised to provide a secondary standard for Pb that protects against adverse environmental effect.

With regard to the pollutant indicator for use in a secondary NAAQS that provides protection for public welfare from exposure to Pb, EPA notes that Pb is a persistent pollutant to which ecological receptors are exposed via multiple pathways. While the evidence indicates that the environmental mobility and ecological toxicity of Pb are affected by various characteristics of its chemical form, and the media in which it occurs, information are insufficient to identify an indicator other than total Pb that would provide protection against adverse environmental effect in all ecosystems nationally.

Lead is a cumulative pollutant with environmental effects that can last many decades. In considering the appropriate averaging time for such a pollutant the concept of critical loads may be useful (CD, Section 7.3). However, information is currently insufficient for such use in this review.

There is a general lack of data that would indicate the appropriate level of Pb in environmental media that may be associated with adverse effects. The EPA notes the influence of airborne Pb on Pb in aquatic systems and of changes in airborne Pb on aquatic systems, as demonstrated by historical patterns in sediment cores from lakes and Pb measurements (Section 2.8.1; CD, Section AX7.2.2; Yohn et al., 2004; Boyle *et al.*, 2005), as well as the comments of the CASAC Pb panel that a significant change to current air concentrations (e.g., via a significant change to the standard) is likely to have significant beneficial effects on the magnitude of Pb exposures in the environment and Pb toxicity impacts on natural and managed terrestrial and aquatic ecosystems in various regions of

the U.S., the Great Lakes and also U.S. territorial waters of the Atlantic Ocean (Henderson, 2007a, Appendix E). We concur with CASAC's conclusion that the Agency lacks the relevant data to provide a clear, quantitative basis for setting a secondary Pb NAAQS that differs from the primary in indicator, averaging time, level or form. Thus, EPA solicits comment on the option of a reduction in the secondary standard consistent with any reduction of the primary standard that would provide increased protection against adverse environmental effect.

Beyond the views noted above, EPA recognizes that there may be differing interpretations of the available evidence and various aspects of the evidence and exposure and risk information, including on the important uncertainties and limitations associated with the evidence and assessment. Thus, EPA solicits additional information pertaining to and comment on the considerations described above, as well as on other views with regard to the elements of a secondary standard for Pb, and the rationale upon which such views are based.

V. Considerations for Ambient Monitoring

A determination of compliance with the Pb NAAQS for any given area is made based on ambient air monitoring data collected by State and local monitoring agencies. This section discusses aspects of the Pb surveillance monitoring requirements with regards to the adequacy under the current primary Pb NAAQS as well as under options being considered for a revised primary Pb NAAQS. These aspects include the sampling and analysis methods, network design, sampling schedule, and data handling methods. In addition, this section discusses the need for monitoring in support of the secondary Pb NAAQS.

A. Sampling and Analysis Methods

To be used in determination of compliance with the Pb NAAQS, the Pb data must be collected and analyzed using a Federal Reference Method (FRM), or a Federal Equivalent Method (FEM). The current FRM for Pb sampling and analyses is based on the use of a high-volume TSP sampler to collect the sample and the use of atomic absorption for the analysis of Pb in the sample (40 CFR 50 Appendix G). There are 21 FEMs currently approved for Pb-TSP (*http://www.epa.gov/ttn/amtic/criteria.html*). All 21 FEMs are based on the use of high-volume TSP samplers, but with a variety of different analysis methods (e.g., XRF and ICP/MS).

Concerns have been raised over the use of high-volume TSP samplers. CASAC has commented that TSP samplers have poor precision, that the upper particle cut size varies widely as a function of wind speed and direction, and that the spatial non-homogeneity of very coarse particles cannot be efficiently captured by a national monitoring network (Henderson, 2007b). For these reasons, CASAC recommended considering a revision to the Pb reference method to allow sample collection using PM_{10} samplers. CASAC suggested that it may be possible to develop a single quantitative adjustment factor from a short period of collocated sampling at multiple sites, or a Pb-PM_{10}/Pb-TSP equivalency ratio could be determined on a regional or site-specific basis.

The EPA evaluated the precision and bias of the high-volume Pb-TSP sampler based on data reported to AQS for collocated samplers and results of in-field sampler flow audits and laboratory audits for Pb (Camalier and Rice, 2007). In this evaluation, we found that the average precision of the high-volume Pb-TSP sampler was approximately 12%, with a standard deviation of 19%, and average sampling bias (based on flow audits) was −0.7%, with a standard deviation of 4.2%. We also estimated the average bias for the lab analyses at −1.1% (with a standard deviation of 5.5%) based on spiked filter audits. Total bias, which includes bias from both sampling and laboratory analysis, was estimated at −1.7%, with a standard deviation of 3.4%. This level of precision and bias is comparable to the goal of the FRM and FEM for other criteria pollutants (e.g., within 10% for $PM_{2.5}$, 40 CFR 58 Appendix A). We attempted to look at the precision of low-volume Pb-PM_{10} samplers based on data reported to AQS, however, we did not have enough data (18 paired data points for one site) to make any conclusions on the precision of this sampler.

Evaluations of the high-volume TSP sampler have demonstrated that the sampler's cutpoint can vary between 25 and 50 μm depending on wind speed and direction (Wedding *et al.*, 1977, McFarland and Rodes, 1979). A study was conducted during the last Pb NAAQS review to evaluate the effect of wind speed and direction on sampler efficiency (Purdue, 1988). This demonstration showed that the Pb collection efficiency of the high-volume TSP sampler ranged from 80% to 90% over a wide range of wind speeds and directions. In comparison, a study conducted near a primary Pb smelter indicated that the ratio of Pb-PM_{10} to Pb-TSP ranged from 17% to 186% for 22 collocated samples (Brion, 1988). We believe that the variability of the collection efficiency of the high-volume TSP sampler does not warrant the discontinuation of its use. However, with this notice, we are soliciting comments on this issue.

We analyzed data from a number of monitoring sites where collocated Pb-TSP and Pb-PM_{10} data have been collected in order to evaluate the appropriateness of using Pb-PM_{10} data as a surrogate for Pb-TSP (Cavender, 2007). From this analysis it is clear that a single relationship can not be made that would allow one to accurately estimate Pb-TSP concentrations from Pb-PM_{10} measurements at all sites. However, at many locations it does appear a strong linear relationship can be shown between Pb-TSP and Pb-PM_{10} concentrations. As such, it may be feasible for a monitoring agency to develop a site-specific relationship, using conservative assumptions, to estimate Pb-TSP based on Pb-PM_{10} measurements. We invite comments on the appropriateness of using Pb-PM_{10} data as a surrogate for Pb-TSP.

While all current FRM and FEM are based on the high-volume TSP sampler, several vendors market low-volume TSP samplers. These samplers are identical to low-volume PM_{10} samplers with the exception of the sampling head and corresponding cut size. These samplers have a number of advantages over the high-volume TSP sampler including the capability of sequential sampling (i.e., the ability to collect more than one sample between operator visits). Sequential sampling would be highly desirable if the sampling frequency is increased as part of a change to a monthly averaging period. Currently, the FEM demonstration requirements [40 CFR 53.33(i)] dictate that the FEM testing must be performed with an ambient Pb-TSP concentration between 0.5 μg/m³ to 4.0 μg/m³. Due to the dramatic decrease in ambient Pb concentrations, there are few (if any) areas in the country where a vendor could be assured that the average ambient Pb-TSP concentrations would meet the FEM demonstration requirements during the field testing period. If the Pb NAAQS is lowered, we believe it is appropriate to lower the FEM requirement to a level more consistent with current ambient Pb concentrations and the lowered NAAQS to allow for continued development and approval of Pb-TSP FEM. We invite comment on the appropriate range of concentrations for an FEM demonstration.

We also reviewed the method detection capabilities of the current lab methods for the FRM and FEM to ensure that these methods had the necessary sensitivity to accurately measure Pb-TSP at the low concentrations considered in the Risk Assessment Report and Staff Paper. Based on data submitted to AQS, the method detection limits for these methods are all 0.01 μg/m^3 or less (Rice, 2007). From these findings, we request comment on whether the current lab analysis methods are adequate for continued use even at the lowest alternative NAAQS levels considered in the Risk Assessment Report and Staff Paper.

B. Network Design

The existing Pb-TSP network has decreased substantially over the last few decades. In 1980 there were over 900 Pb-TSP sites, this number has been reduced to approximately 200 sites. These reductions were made because of substantially reduced ambient Pb concentrations and shifting priorities to other criteria pollutants. Now several states have no Pb-TSP monitors resulting in large portions of the country with no data on current ambient Pb-TSP concentrations. In addition, many of the largest Pb emitting sources in the country do not have nearby monitors, and there is substantial uncertainty about ambient air Pb levels resulting from historic Pb deposits near roadways. For these reasons, we request comment on whether the existing Pb-TSP network may not be adequate, and that additional monitoring sites may be needed to determine compliance with either the current or revised Pb NAAQS.

The minimum network design requirements are given in 40 CFR 58 Appendix D. The current network design requirements are for 2 FRM or FEM sites in any area where Pb concentrations exceed or have exceeded the NAAQS in the most recent 2 years. These requirements may make it difficult to persuade state and local monitoring agencies to add monitors in areas without existing monitors. As such, we believe that these requirements are not adequate and should be modified (as part of this rulemaking) to ensure monitoring is conducted in areas where NAAQS violations may occur.

We request comment on options for improving the coverage of the Pb network. One option would be to adopt network requirements similar to those recently promulgated for $PM_{2.5}$ and ozone which tie the number of required monitors to the population of the urban area and ambient Pb concentrations (40 CFR 58 Appendix D). Under this approach, more monitoring sites would be required in areas with larger populations and higher Pb concentrations. This approach would result in improved network coverage in urban areas. However, large Pb emitting sources that are not in urban areas may still not be monitored.

A second option would be to require one or more monitors near large Pb emitting sources. For example, a monitor could be required at the point near the maximum predicted concentrations for sources with a potential Pb emission rate of 1 ton per year or more (as provided by the most recent National Emissions Inventory, or permit data). Clearly, some effort would be necessary to identify an appropriate emissions threshold to ensure that all emission sources with the potential to exceed the NAAQS are monitored without creating undue burden where there is no potential to exceed the NAAQS. This option would ensure coverage of the highest Pb emitting sources, but may not provide adequate coverage in many populated areas where a combination of smaller emissions sources and re-entrained dust may result in Pb concentrations in excess of the NAAQS.

A third option could be created by the combination of the first two options discussed above: Establish a minimum number of required monitors in urban areas based on population and ambient Pb concentrations and require monitors near large Pb emission sources. This option would provide good monitoring coverage in urban areas and near Pb emissions sources. Again, care would need to be taken in establishing an emissions threshold.

A fourth option would be to utilize the current PM_{10} network if an acceptable regional or site-specific correlation of Pb-TSP and Pb-PM_{10} can be made. This option would provide a substantial increase in monitoring coverage without requiring a large investment in new monitoring stations. The current PM_{10} network has been carefully established to include both rural and urban ambient levels, though it was not designed to monitor near large Pb emitting sources. We invite comments on these options as well as suggestions for additional options to consider for improving the Pb network.

C. Sampling Schedule

The current sampling frequency requirement is for one 24-hour sample every six days [40 CFR 58.12(b)]. For the current NAAQS, which is based on a quarterly average, the 1-in-6 sampling schedule yields 15 samples per quarter on average with 100% completeness, or 12 samples with 75% completeness. A change to a monthly averaging period would result in between 4 and 6 samples per month at the current sampling frequency. If we change the averaging time to a monthly average, we would likely need to increase the sampling frequency as 4 samples would not result in a statistically valid estimate of the actual air quality for the period.

Incomplete sampling results in increased uncertainty in the estimate of actual ambient air quality. While some degree of uncertainty is unavoidable due to the precision and bias inherent to the sampling technique, it is important to understand the level of uncertainty for each sampling option being considered and to select a sampling frequency which achieves an acceptable level of uncertainty. We plan to go through the Data Quality Objectives (DQO) process in order to help us select an appropriate sampling option. The DQO process is a series of logical steps that guides decision makers to a plan for the resource-effective acquisition of environmental data. The DQO process is used to establish performance and acceptance criteria, which serve as the basis for designing a plan for collecting data of sufficient quality and quantity to support the goals of the study (EPA, 2006e, EPA/240/B–06/001).

We are considering several options for sampling frequency. These options include maintaining the current 1-in-6 day sampling schedule, increasing the sampling frequency to 1-in-3 day, or increasing the sampling frequency to 1-in-1 day sampling (i.e., complete sampling). In addition, we will be considering an option that relates sampling frequency to recent ambient Pb-TSP concentrations, such that an increased sampling frequency is required as the recent ambient Pb-TSP concentrations approach the NAAQS level. Other options that we will be considering include—

- Increasing sampling time duration (e.g., changing from a 24 hour sampling time duration to a 48 or 72 hour sampling time duration).
- Allowing for compositing of samples (i.e., analyzing sequential samples together).
- Allowing for multiple samplers at one site.

We invite comments on the appropriateness of these sampling options and suggestions for additional options for consideration.

D. Data Handling

A number of data handling conventions and computations are necessary when using ambient monitoring data to determine attainment

or non-attainment of the NAAQS. Recently, we have been codifying these data handling conventions and computations into a separate appendix for each NAAQS. As such, we intend to create an appendix for the interpretation of the Pb NAAQS as part of this rule making. Specific conventions we are considering and invite comments on at this time include the following—

- Design values will be developed based on the most recent 3 calendar year period.
- Design values will be rounded to two significant figures using conventional rounding methodology.
- 75% of the expected number of samples is needed for a quarter to be considered complete, or 50% for a month.
- Only one period (i.e., one month or one quarter depending on the final form of the standard) is needed to demonstrate non-attainment. Two periods would be needed if the NAAQS is based on the 2nd maximum.
- Three full consecutive years of complete data are needed to re-designate an area attainment from non-attainment.
- Incomplete periods can be used to demonstrate non-attainment, but not attainment.

E. Monitoring for the Secondary NAAQS

Currently, the secondary NAAQS is set equal to the primary NAAQS (1.5 μg/m^3, maximum quarterly average). We do not expect there to be ambient air concentrations in excess of the secondary NAAQS in rural areas that are not associated with a Pb emission source. If the secondary standard remains equal to the primary standard at the completion of the current review, we request comment on the option of developing Pb surveillance monitoring requirements for the primary NAAQS that will be sufficient to determine compliance with the secondary NAAQS.

While additional monitoring may not be necessary to demonstrate compliance with the secondary NAAQS, CASAC has recommended additional monitoring to gather information to better inform consideration of the secondary NAAQS in the next and future reviews. Specifically, CASAC stated that ''the EPA needs to initiate new measurement activities in rural areas—which quantify and track changes in lead concentrations in the ambient air, soils, deposition, surface waters, sediments and biota, along with other information as may be needed to calculate and apply a critical loads approach for assessing environmental lead exposures and risks in the next review cycle'' (Henderson, 2007b).

We currently monitor ambient Pb in $PM_{2.5}$ as part of the IMPROVE network. There are 110 formally designated IMPROVE sites located in or near national parks and other Class I visibility areas, virtually all of these being rural. Approximately 80 additional sites at various urban and rural locations, requested and funded by various parties, are also informally treated as part of the network. While we believe it may not be appropriate to rely on either Pb-PM_{10} or Pb-$PM_{2.5}$ monitoring to demonstrate compliance with a Pb-TSP NAAQS, we believe the Pb-$PM_{2.5}$ measurements provided by the IMPROVE network can be used as a useful indicator to track changes in ambient Pb concentrations and resulting Pb deposition in rural areas that are not directly impacted by a Pb emission source. It may also be desirable to augment the IMPROVE network with a small ''sentinel'' network of collocated Pb-TSP monitors for a period of time in order to develop a better understanding of how Pb-$PM_{2.5}$ and Pb-TSP relate in these rural areas. Alternatively, since it is likely that at rural locations nearly all Pb is in the less than 10 μm size range, we could analyze the PM_{10} mass samples (which are already being collected) for Pb for a period of time to develop a better understanding of how Pb-$PM_{2.5}$ and Pb-PM_{10} relate in these rural areas. We welcome comments on the value and appropriateness of use of the IMPROVE Pb-$PM_{2.5}$ data for assessing trends in ambient air concentrations of Pb, and the need to collocate a small network of Pb-TSP or Pb-PM_{10} monitors at IMPROVE sites.

The National Water-Quality Assessment (NAWQA), conducted by the United States Geological Survey, contains data on Pb concentrations in surface water, bed sediment, and animal tissue for more than 50 river basins and aquifers throughout the country (CD, AX7.2.2.2). NAWQA data are collected during long-term, cyclical investigations wherein study units undergo intensive sampling for 3 to 4 years, followed by low-intensity monitoring and assessment of trends every 10 years. Similarly, the USGS is collaborating with Canadian and Mexican government agencies on a multi-national project called ''Geochemical Landscapes'' that has as its long-term goal a soil geochemical survey of North America (*http://minerals.cr.usgs.gov/projects/geochemical_landscapes/index.html*). The Geochemical Landscapes project has the potential to fill the need for periodic Pb soil sampling. We note the value of the NAWQA and Geochemical Landscapes data in the assessment of trends in Pb concentrations in both soil and aquatic systems, and support the continued collection of this data by the USGS.

VI. Solicitation of Comment

With the issuance of this ANPR, the Agency is soliciting broad public input to inform the Agency's proposed rulemaking related to the review of the Pb NAAQS. As noted in Section I above, this ANPR, as a consequence of the timing of the Pb NAAQS review relative to the Agency's initiation of the new NAAQS process, summarizes information from the OAQPS Staff Paper, and from the Agency's risk assessment and Criteria Document. In so doing, this notice presents OAQPS staff views on the adequacy of the current standard and on a range of policy options for the Administrator's consideration, together with the views of CASAC and the public as reflected in their comments on the related documents that have been previously made available for review. The Agency is soliciting comment on the range of views discussed above as well as any broader range of options that members of the public feel appropriate for the Administrator to consider. Comments are solicited together with the rationales for the views expressed in those comments. The Agency is also soliciting further advice from CASAC on the issues discussed in this notice at an upcoming public meeting (announced in a separate **Federal Register** notice).

In soliciting public comment in advance of reaching proposed decisions on whether to retain or revise the NAAQS under review, the Agency is interested in general, specific, and technical comments on all aspects of the rulemaking discussed in this notice and the related documents. These aspects generally include characterization of Pb in the ambient environment, characterization of the health effects evidence and the assessment of human exposure and health risk, characterization of the environmental effects evidence and consideration of environmental exposure and risk, as well as an assessment of the adequacy of the current primary and secondary standards and of alternative standards for the Administrator's consideration in reaching proposed decisions in this review of the Pb NAAQS. We solicit broad comment on these aspects of this rulemaking, informed by the discussion presented in this notice as well as the more comprehensive discussion in the Criteria Document, the Staff Paper, and related risk assessment reports.

Several types of information pertinent to the characterization of Pb in the

ambient environment are considered for this review. These include characterization of sources of Pb, including source distribution within the U.S. and associated estimates of the magnitude of air emissions. The currently available information on the magnitude, geographic distribution and variability of Pb levels in the ambient air is also considered. Further, given that Pb is a multimedia pollutant, characterization of Pb includes consideration of atmospheric deposition and Pb in ambient soil, surface waters and sediment. Comments, including information and views, are solicited in all of these areas as well as any other areas related to the characterization of Pb in the ambient environment that are relevant to this review.

The current health effects evidence for Pb, evaluated in the Agency's Criteria Document, encompasses a broad range of information regarding human exposure to ambient Pb, toxicokinetics of Pb, biological markers and models of Pb burden in humans, toxicological effects of Pb in laboratory animals and in vitro test systems, and epidemiologic studies of human health effects associated with Pb exposure. In addition, based on the information in the Criteria Documents, quantitative assessments of human exposures to Pb and associated health risks as well as environmental exposures and related risks have been conducted and are presented in related risk assessment reports. We are soliciting comments, including information and views, informed by the Criteria Document, Staff Paper, and risk assessment reports, on characterization of the health effects evidence and consideration of human exposure and health risk associated with Pb exposures. Similarly, the Agency is soliciting comment on the characterization of the environmental effects evidence and environmental risks of Pb relevant to this review.

With regard to the primary and secondary standards, a wide range of views have been expressed, reflecting differing conclusions about the scientific evidence and quantitative risk assessments and differing public health and welfare policy judgments about appropriate standards. These views range from asserting the need for significant strengthening of the standards to a recommendation in public comments that the Pb NAAQS should be revoked and/or Pb should be delisted as a criteria pollutant. We solicit comment on these views as well as on any other views that are thought to be appropriate for the Agency to consider, together with rationales for the views expressed. More specifically, we solicit comment, including views and associated rationale, informed by the Criteria Document, Staff Paper and related risk assessment reports, on the adequacy of the current primary and secondary standards. We also solicit comment on the range of alternative primary and secondary standards the Agency should consider, with a focus on the four basic elements of the standards, including indicator, averaging time, level, and form. Further, we are soliciting comment on the view that it is appropriate to revoke the NAAQS for Pb or to remove Pb from the list of criteria pollutants.

Issues related to Pb surveillance monitoring requirements relevant to this review are also discussed in this notice. These issues fall into several areas, including sampling and analysis methods related to Pb-TSP and Pb-PM_{10} measurements, monitoring network design, sampling schedule, and data handling. Specific aspects of monitoring in support of the secondary standard are also discussed. We are soliciting comments on the issues related to Pb surveillance monitoring requirements identified in this notice as well as on other issues relevant to these requirements in this review.

The Agency will consider comments received in response to this notice in reaching proposed decisions in this rulemaking. As noted above, the public will have an additional opportunity for comment on the proposed rulemaking, which will further inform the Administrator's final decisions on the Pb NAAQS.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

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List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: December 5, 2007.

Stephen L. Johnson,

Administrator.

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Part III

Securities and Exchange Commission

17 CFR Parts 230 and 239
Revisions to Rules 144 and 145; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–8869; File No. S7–11–07]

RIN 3235–AH13

Revisions to Rules 144 and 145

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: Rule 144 under the Securities Act of 1933 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. We are shortening the holding period requirement under Rule 144 for ''restricted securities'' of issuers that are subject to the reporting requirements of the Securities Exchange Act of 1934 to six months. Restricted securities of issuers that are not subject to the Exchange Act reporting requirements will continue to be subject to a one-year holding period prior to any public resale. The amendments also substantially reduce the restrictions applicable to the resale of securities by non-affiliates. In addition, the amendments simplify the Preliminary Note to Rule 144, amend the manner of sale requirements and eliminate them with respect to debt securities, amend the volume limitations for debt securities, increase the Form 144 filing thresholds, and codify several staff interpretive positions that relate to Rule 144. Finally, we are eliminating the presumptive underwriter provision in Securities Act Rule 145, except for transactions involving a shell company, and revising the resale requirements in Rule 145(d). We believe that the amendments will increase the liquidity of privately sold securities and decrease the cost of capital for all issuers without compromising investor protection.

DATES: *Effective Date:* February 15, 2008. The revised holding periods and other amendments that we are adopting are applicable to securities acquired before or after February 15, 2008. *Comment Date:* Comments regarding the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 should be received on or before January 16, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–11–07 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Katherine Hsu or Raymond A. Be, Special Counsels in the Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 144,[1] Rule 145,[2] Rule 190,[3] Rule 701,[4] Rule 903,[5] and Form 144[6] under the Securities Act of 1933.[7]

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I. Background

The Securities Act of 1933 (''Securities Act'') requires registration of all offers and sales of securities in interstate commerce or by use of the U.S. mails, unless an exemption from the registration requirement is available.[8] Section 4(1) of the Securities Act provides such an exemption for transactions by any person other than an issuer, underwriter or dealer.[9]

The definition of the term ''underwriter'' is key to the operation of the Section 4(1) exemption. Section 2(a)(11) of the Securities Act defines an

[1] 17 CFR 230.144.
[2] 17 CFR 230.145.
[3] 17 CFR 230.190.
[4] 17 CFR 230.701.
[5] 17 CFR 230.903.
[6] 17 CFR 239.144.
[7] 15 U.S.C. 77a *et seq.*
[8] See 15 U.S.C. 77e.
[9] 15 U.S.C. 77d(1).

underwriter as ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking.'' [10] The Securities Act does not, however, provide specific criteria for determining when a person purchases securities ''with a view to * * * the distribution'' of those securities. In 1972, the Commission adopted Rule 144 to provide a safe harbor from this definition of ''underwriter'' to assist security holders in determining whether the Section 4(1) exemption is available for their resale of securities.[11]

Rule 144 regulates the resale of two categories of securities—restricted securities and control securities. Restricted securities are securities acquired pursuant to one of the transactions listed in Rule 144(a)(3).[12] Although it is not a term defined in Rule 144, ''control securities'' is used commonly to refer to securities held by an affiliate of the issuer,[13] regardless of how the affiliate acquired the securities.[14] Therefore, if an affiliate acquires securities in a transaction that is listed in Rule 144(a)(3), those securities are both restricted securities and control securities. A person selling restricted securities, or a person selling restricted or other securities on behalf of the account of an affiliate, who satisfies all of Rule 144's applicable conditions in connection with the transaction, is deemed not to be an ''underwriter,'' as defined in Section 2(a)(11) of the Securities Act, and therefore may rely on the Section 4(1) exemption for the resale of the securities.

Since its adoption, we have reviewed and revised Rule 144 several times. We last made major changes in 1997 (''1997 amendments'').[15] At that time, we shortened the required holding periods for restricted securities.[16] Before the 1997 amendments, security holders could resell restricted securities under Rule 144, subject to limitation, after two years, and persons who were not affiliates and had not been affiliates during the prior three months, could resell restricted securities without limitation after three years. The 1997 amendments changed these two-year and three-year periods to one-year and two-year periods, respectively.

On the same day that we adopted those changes, we also proposed and solicited comment on several possible additional changes to Rule 144, Rule 145 and Form 144, including reducing the holding period further (''1997 Proposing Release'' and ''1997 proposals'').[17] We received 38 comment letters on those proposed changes. While some commenters supported further shortening the holding periods, others suggested that we monitor the results of the 1997 amendments before making further changes. We did not take further action to adopt the 1997 proposals.

Rule 144 states that a selling security holder shall be deemed not to be engaged in a distribution of securities, and therefore not an underwriter, with respect to such securities, thus making available the Section 4(1) exemption from registration, if the resale satisfies specified conditions. The conditions include the following:

- There must be adequate current public information available about the issuer;[18]
- If the securities being sold are restricted securities, the security holder must have held the security for a specified holding period;[19]
- The resale must be within specified sales volume limitations;[20]
- The resale must comply with the manner of sale requirements;[21] and
- The selling security holder must file Form 144 if the amount of securities being sold exceeds specified thresholds.[22]

Rule 144, as it existed before today's amendments, permitted a non-affiliate to publicly resell restricted securities without being subject to the above limitations if the securities had been held for two years or more, provided that the security holder was not, and, for the three months prior to the sale, had not been, an affiliate of the issuer.[23]

On July 5, 2007, we again proposed to amend several aspects of Rule 144 and Rule 145, including by further shortening the holding periods (the ''2007 Proposing Release'').[24] We proposed to shorten the holding period requirement in Rule 144(d) for restricted securities of issuers that are subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[25] to six months. Restricted securities of issuers that are not subject to Exchange Act reporting requirements would continue to be subject to a one-year holding period under Rule 144(d). We also proposed to relieve non-affiliates of reporting issuers from having to comply with all conditions in Rule 144, except the current public information requirement, after a six-month holding period. Non-affiliates of non-reporting issuers would be allowed to resell their securities freely after a one-year holding period. In addition, we proposed to:

- Simplify the Preliminary Note to Rule 144 and text of Rule 144;
- Toll the holding period during the time that security holders engage in certain hedging transactions;
- Eliminate the ''manner of sale'' requirements with respect to the resale of debt securities;
- Increase the thresholds triggering the requirement to file Form 144; and
- Codify several staff positions relating to Rule 144.

We also solicited comment on amending the Form 144 filing deadline to coincide with the deadline for filing a Form 4 [26] under Section 16 [27] of the Exchange Act and permitting persons who are subject to Section 16 to meet their Form 144 filing requirement by

[10] 15 U.S.C. 77b(a)(11). Section 2(a)(11) states that the term ''issuer'' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. Therefore, any person who purchased securities from an affiliate of an issuer is an underwriter under Section 2(a)(11) if that person purchased with a view to the distribution of the securities.

[11] Release No. 33–5223 (Jan. 11, 1972) [37 FR 591].

[12] 17 CFR 230.144(a)(3).

[13] An affiliate of the issuer is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer. See 17 CFR 230.144(a)(1).

[14] See, *e.g.*, Release No. 33–7391 (Feb. 20, 1997) [62 FR 9246].

[15] See Release No. 33–7390 (Feb. 20, 1997) [62 FR 9242] (''the 1997 Adopting Release'').

[16] We shortened the holding period requirements in paragraphs (d) and (k) of Rule 144.

[17] See the 1997 Proposing Release. In the 1997 Proposing Release, we proposed to (1) revise the Preliminary Note to Rule 144 to restate the intent and effect of the rule, (2) add a bright-line test to the Rule 144 definition of ''affiliate,'' (3) eliminate the Rule 144 manner of sale requirements, (4) increase the Form 144 filing thresholds, (5) include in the definition of ''restricted securities'' securities issued pursuant to the Securities Act Section 4(6) exemption, (6) clarify the holding period determination for securities acquired in certain exchanges with the issuer and in holding company formations, (7) streamline and simplify several Rule 144 provisions, and (8) eliminate the presumptive underwriter provisions of Rule 145. We also solicited comment on (1) further revisions to the Rule 144 holding periods, (2) elimination of the trading volume tests to determine the amount of securities that can be resold under Rule 144, and (3) several possible regulatory approaches with respect to certain hedging activities.

[18] 17 CFR 230.144(c).

[19] 17 CFR 230.144(d).

[20] 17 CFR 230.144(e).

[21] 17 CFR 230.144(f) and (g).

[22] 17 CFR 230.144(h).

[23] This provision was previously located in Rule 144(k).

[24] Release No. 33–8813 (June 22, 2007) [72 FR 36822] (Jul. 5, 2007).

[25] 15 U.S.C. 78a *et seq.*

[26] 17 CFR 249.104.

[27] 15 U.S.C. 78p.

filing a Form 4.[28] Finally, we proposed to eliminate the presumptive underwriter provision in Securities Act Rule 145, except for transactions involving a shell company, and to harmonize the resale provisions in Rule 145 with the Rule 144 provisions applicable to resales of securities of shell companies.

We received 32 comment letters from 30 commenters on the proposals in the 2007 Proposing Release.[29] A majority of the commenters expressed support for the proposals in general.[30] Several of these commenters expressed support for the proposed amendments to shorten the holding period requirement in Rule 144 for both affiliates and non-affiliates of Exchange Act reporting issuers.[31] Two commenters opposed shortening the holding period, as proposed.[32]

Some commenters expressed opposition to the proposed reintroduction of a provision that would toll, or suspend, for up to six months, the holding period during any period that a security holder engages in hedging activities with respect to any equity securities of the same class as the restricted securities or any securities convertible into that class (or, in the case of nonconvertible debt, with respect to any nonconvertible debt securities).[33] The commenters thought that the tolling provision could have a negative effect on capital raising transactions. These commenters provided several recommendations on how we should modify the tolling provision, if we decide to adopt it. We received general support for the other aspects of the proposed amendments, including the proposals relating to Form 144, the elimination of the manner of sale requirements for debt securities and the codification of several staff interpretations.

II. Discussion of Final Amendments

A. Simplification of the Preliminary Note and Text of Rule 144

In the 2007 Proposing Release, we noted that the current Preliminary Note is complex and may be confusing to some security holders. We proposed amendments to simplify and clarify the Preliminary Note to Rule 144 and to incorporate plain English principles. The proposed amendments to the Preliminary Note were not intended to alter the substantive operation of the rule. In addition, we proposed changes throughout the rule to make the rule less complex and easier to read.

We received a few comments on the proposed changes to simplify Rule 144 and the Preliminary Note. One commenter believed that the Preliminary Note to Rule 144 is no longer necessary, because the purpose and meaning of the rule are well-understood.[34] Some commenters recommended that we further explain how Rule 144 can be used for the resale of control securities.[35]

We are adopting the amendments to the Preliminary Note with some modification from the proposed version. The revised Preliminary Note retains an explanation of the relationship among the exemption in Section 4(1) of the Securities Act, the Section 2(a)(11) definition of ''underwriter'' and the Rule 144 safe harbor. Consistent with the proposal, the revised Preliminary Note also clarifies that any person who sells restricted securities, and any person who sells restricted securities or other securities on behalf of an affiliate, shall be deemed not to be engaged in a distribution of such securities and therefore shall be deemed not to be an underwriter with respect to such securities if the sale in question is made in accordance with all the applicable provisions of the rule. The revised Preliminary Note further states that, although Rule 144 provides a safe harbor for establishing the availability of the Section 4(1) exemption, it is not the exclusive means for reselling restricted and control securities. Therefore, Rule 144 does not eliminate or otherwise affect the availability of any other exemption for resales.[36] Consistent with a statement that was included in the original Rule 144 adopting release,[37] we are adding a statement to the Preliminary Note that the Rule 144 safe harbor is not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Securities Act.[38] We also are adopting plain English changes throughout the rule text substantially as proposed.

B. Amendments to Holding Periods for Restricted Securities

1. Six-Month Rule 144(d) Holding Period Requirement for Exchange Act Reporting Companies

As stated above, in 1997, we reduced the Rule 144 holding periods for restricted securities for both affiliates and non-affiliates.[39] Before the 1997 amendments, security holders could sell limited amounts of restricted securities after holding those securities for two years if they satisfied all other conditions imposed by Rule 144.[40] Under Rule 144(k), non-affiliates could sell restricted securities without being subject to any of the conditions in Rule 144 after holding their securities for three years. The 1997 amendments to

[28] Section 16 applies to every person who is the beneficial owner of more than 10% of any class of equity securities registered under Section 12 of the Exchange Act, and each officer and director (collectively, ''reporting persons'' or ''insiders'') of the issuer of such security. Section 16(a) of the Exchange Act generally requires reporting persons to report changes in their beneficial ownership of all equity securities of the issuer on Form 4 before the end of the second business day following the day on which the transaction that caused the change in beneficial ownership was executed.

[29] The comment letters on the 2007 Proposing Release are available on the Commission's public Web site at *http://www.sec.gov/comments/s7–11–07/s71107.shtml.*

[30] See, *e.g.*, comment letters on the 2007 Proposing Release from Jesse Brill (dated Aug. 1, 2007) (''Brill 1''); Cleary Gottlieb Steen & Hamilton LLP (''Cleary Gottlieb''); Feldman Weinstein and Smith LLP (''Feldman''); Fried, Frank, Harris, Shriver, and Jacobsen LLP (''Fried Frank''); Barry Gleicher (''Gleicher''); Krieger & Prager, LLP (''Krieger''); U.S. Securities Lawyers in London (''London Forum''); Parsons/Burnett LLP (''Parsons''); Pink Sheets, LLC (''Pink Sheets''); Richardson Patel LLP (''Richardson Patel''); Roth Capital Partners (''Roth''); Society of Corporate Secretaries & Governance Professionals (''SCSGP''); Sichenzia Ross Friedman Ference LLP (''Sichenzia''); Sullivan & Cromwell LLP (''Sullivan''); Peter J. Weisman (''Weisman''); and Williams Securities Law (''Williams''); and a joint letter from the Securities Industry and Financial Markets Association, International Swaps and Derivatives Association, Inc. and Management Funds Association (''Financial Associations'').

[31] See comment letters on the 2007 Proposing Release from the Committee on Federal Regulation of Securities of the American Bar Association (''ABA''); Feldman; Financial Associations; Fried Frank; London Forum; Richardson Patel; Roth; Sichenzia; SCSGP; Weisman; and Williams.

[32] See comment letters on the 2007 Proposing Release from the North American Securities Administrators Association, Inc. (''NASAA'') and Marc I. Steinberg (''Steinberg'').

[33] See comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; Feldman; Financial Associations; Richardson Patel; Sichenzia; and Weisman.

[34] See comment letter on the 2007 Proposing Release from ABA.

[35] See comment letters on the 2007 Proposing Release from ABA; Bulldog Investors; and Sutherland Asbill & Brennan LLP (''Sutherland'').

[36] We are moving the statements indicating that Rule 144 is a non-exclusive safe harbor from paragraph (j) of the rule, as it existed prior to the amendments, to the Preliminary Note.

[37] Release No. 33–5223. In the original release adopting Rule 144, we stated:

In view of the objectives and policies underlying the Act, the rule shall not be available to any individual or entity with respect to any transaction which, although in technical compliance with the provisions of the rule, is part of a plan by such individual or entity to distribute or redistribute securities to the public. In such case, registration is required.

[38] Similar language can also be found in other rules such as in the Preliminary Note to Securities Act Rule 144A [17 CFR 230.144A].

[39] See the 1997 Adopting Release.

[40] These other conditions included the availability of current public information, the volume of sale limitations, the manner of sale requirements, and the filing of Form 144. See 17 CFR 230.144(c), (e), (f) and (h).

Rule 144 reduced the two-year Rule 144(d) holding period to one year and amended the three-year Rule 144(k) holding period to two years.

In the 1997 Proposing Release, we solicited comment on whether the Rule 144(d) holding period should be further reduced for both affiliates and non-affiliates, and whether restrictions applicable to sales by non-affiliates also should be reduced. We received numerous comments on this issue. Twelve commenters recommended that we further reduce the holding period to six months.[41] Two other commenters thought that we should maintain the holding periods that we had just recently adopted.[42] Eight commenters recommended that we gain more experience with the new holding periods before proposing further amendments to those holding periods.[43]

In the 2007 Proposing Release, we again proposed to shorten the Rule 144(d) holding period for restricted securities held by affiliates and non-affiliates.[44] The proposal would have permitted both affiliates and non-affiliates to publicly sell restricted securities of Exchange Act reporting issuers[45] after holding the securities for six months, subject to any other applicable condition of Rule 144, if they had not engaged in hedging transactions with respect to the securities. Because of our concern that the market does not have sufficient information and safeguards with respect to non-reporting issuers, we proposed to retain the one-year holding period for restricted securities of issuers that are not subject to Exchange Act Section 13(a) or Section 15(d) reporting obligations for both affiliates and non-affiliates.

Several commenters supported the proposal to shorten the holding period to six months for securities of reporting issuers.[46] These commenters noted that the shortened holding period would increase liquidity for issuers, make capital investment more attractive, and decrease costs of capital for smaller companies without sacrificing investor protection.[47] In this regard, one commenter noted that today's markets now function at an accelerated pace, and technology, particularly the Internet, has caused the markets to become more efficient.[48] Two commenters advocated an even shorter holding period requirement than the proposed six-month period, with one commenter advocating a four-month holding period and the other a three-month holding period.[49] Two commenters opposed shortening the holding period requirement under Rule 144, as proposed.[50]

The purpose of Rule 144 is to provide objective criteria for determining that the person selling securities to the public has not acquired the securities from the issuer for distribution. A holding period is one criterion established to demonstrate that the selling security holder did not acquire the securities to be sold under Rule 144 with distributive intent. We do not want the holding period to be longer than necessary or impose any unnecessary costs or restrictions on capital formation. After observing the operation of Rule 144 since the 1997 amendments, we believe that a six-month holding period for securities of reporting issuers provides a reasonable indication that an investor has assumed the economic risk of investment in the securities to be resold under Rule 144. Therefore, we are adopting a six-month holding period for reporting companies, as proposed.[51] Most commenters agreed that shortening the holding period to six months for restricted securities of reporting issuers will increase the liquidity of privately sold securities and decrease the cost of capital for reporting issuers, while still being consistent with investor protection.[52] By reducing the holding period for restricted securities, these amendments are intended to help companies to raise capital more easily and less expensively. For example, by making private offerings more attractive, the amendments may allow some companies to avoid certain types of costly financing structures involving the issuance of extremely dilutive convertible securities. Many commenters supported the proposal to maintain the existing one-year holding period for restricted securities of non-reporting issuers.[53]

Under the amendments that we are adopting, the six-month holding period requirement will apply to the securities of an issuer that has been subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act for a period of at least 90 days before the Rule 144 sale.[54] Restricted securities of a ''non-reporting issuer'' will continue to be subject to a one-year holding period requirement.[55] A non-reporting issuer is one that is not, or has not been for a period of at least 90 days before the Rule 144 sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.[56]

We believe that different holding periods for reporting and non-reporting issuers are appropriate given that reporting issuers have an obligation to file periodic reports with updated financial information (including audited financial information in annual filings) that are publicly available on EDGAR, the Commission's electronic filing system. Although non-reporting issuers

[41] See comment letters on the 1997 Proposing Release from American Society of Corporate Secretaries (''ASCS''); Association for Investment Management & Research (''AIMR''); Association of the City Bar of New York (''NY City Bar''); Baltimore Gas & Electric (''BG&E''); Investment Company Institute (''ICI''); Charles Lilienthal (''Lilienthal''); Loeb &Loeb LLP; New York State Bar Association (''NY Bar''); Schwartz Investments, LLC (''Schwartz Investments''); Sullivan; Testa, Hurwitz & Thibeault, LLP (''Testa Hurwitz''); and Willkie, Farr & Gallagher LLP (''Willkie Farr''). The comment letters on the 1997 Proposing Release are available on the Commission's Web site at *http://www.sec.gov/rules/proposed/s7797.shtml* or in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Interested persons should refer to File No. S7–07–97.

[42] See comment letters on the 1997 Proposing Release from Argent Securities, Inc. (''Argent'') and The Corporate Counsel (''Corporate Counsel'').

[43] See comment letters on the 1997 Proposing Release from ABA; joint letter from Goldman Sachs & Co., JP Morgan Securities, Inc., Morgan Stanley & Co., Inc., and Salomon Brothers Inc. (''Four Brokers''); Lehman Brothers Inc. (''Lehman Brothers''); Merrill Lynch & Co., Inc. (''Merrill Lynch''); Morgan Stanley & Co., Inc. (''Morgan Stanley''); Regional Investment Bankers Association (''Regional Bankers''); Securities Industry Association (''SIA''); and Smith Barney Inc. (''Smith Barney'').

[44] See the 2007 Proposing Release at Section II.B.2.a.

[45] Under the 2007 proposals, the six-month holding period would apply to securities of an issuer that is, and has been for at least 90 days before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

[46] See comment letters on the 2007 Proposing Release from ABA; Feldman; Financial Associations; Fried Frank; London Forum; Richardson Patel; Roth; Sichenzia; SCSGP; Weisman; and Williams.

[47] See comment letters on the 2007 Proposing Release from Financial Associations; Pink Sheets; Richardson Patel; and Roth.

[48] See comment letter on the 2007 Proposing Release from ABA. See also letter to John W. White, Director, SEC Division of Corporation Finance, from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, ABA Section of Business Law (Mar. 22, 2007) (''the March 2007 ABA Letter''), available at *http://www.sec.gov/comments/s7–11–07/s71107.shtml*.

[49] See comment letters on the 2007 Proposing Release from Feldman and Weisman.

[50] See comment letters on the 2007 Proposing Release from NASAA and Steinberg.

[51] See amendments to Rule 144(d). The amendments do not change the Rule 144(d) requirement that, if the acquiror takes the securities by purchase, the holding period will not commence until the full purchase price is paid.

[52] See Section VI. of this release.

[53] See comment letters on the 2007 Proposing Release from ABA; Brill 1; Financial Associations; Gleicher; Weisman; and Williams.

[54] See new Rule 144(d)(1)(i). We also are making conforming amendments to paragraphs (e)(3)(ii), (e)(3)(iii) and (e)(3)(iv) of Rule 144.

[55] However, non-affiliates of non-reporting companies will no longer be subject to any other resale restrictions after meeting the one-year holding period. See Section II.B.3 below.

[56] See new Rule 144(d)(1)(ii).

must make some information publicly available before resales can be made under Rule 144, this information typically is much more limited in scope than information included in Exchange Act reports, is not required to include audited financial information, and is not publicly available via EDGAR.[57] For these reasons, we believe that continuing to require security holders of non-reporting issuers to hold their securities for one year is not unduly burdensome and is consistent with investor protection.

2. Significant Reduction of Conditions Applicable to Non-Affiliates

Before adoption of these amendments, both non-affiliates and affiliates were subject to all other applicable conditions of Rule 144, in addition to the Rule 144(d) holding period requirement, including the condition that current information about the issuer of the securities be publicly available, the limitations on the amount of securities that may be sold in any three-month period, the manner of sale requirements and the Form 144 notice requirement. However, pursuant to paragraph (k) of Rule 144 as it existed prior to the amendments that we are adopting, a non-affiliate of the issuer at the time of the Rule 144 sale who had not been an affiliate during the three months prior to the sale, could sell the securities after holding them for two years without complying with these other conditions.

In the 2007 Proposing Release, we proposed to permit non-affiliates to resell their restricted securities freely after meeting the applicable holding period requirement (i.e., six months with respect to a reporting issuer and one year with respect to a non-reporting issuer), except that non-affiliates of reporting issuers still would be subject to the current public information requirement in Rule 144(c) for an additional six months after the end of the initial six-month holding period.

In general, commenters supported the proposal to reduce substantially the requirements for the resale of restricted securities by non-affiliates under Rule 144.[58] Noting the importance of the current public information condition, two commenters expressed support for the proposed retention of that requirement for the resales of restricted securities by non-affiliates occurring between six months and one year after acquisition of the securities.[59] Some commenters expressed support for removal of the manner of sale requirements and the Form 144 notice requirement,[60] while a few objected to removal of those requirements.[61] The commenters objecting to the removal of those requirements expressed concern about the transparency of Rule 144 transactions and the potential increase in violations of the holding period requirement if the manner of sale requirements and the Form 144 notice requirement were eliminated.[62] The two commenters that opposed shortening the Rule 144(d) holding period also opposed the proposals to permit non-affiliates to resell without being subject to any other condition (except the public information requirement, with respect to resales of securities of reporting companies) after they meet the holding period.[63]

We are adopting the amendments for the sale of restricted securities by non-affiliates after the holding period, as proposed.[64] Under the amendments, after the applicable holding period requirement is met, the resale of restricted securities by a non-affiliate under Rule 144 will no longer be subject to any other conditions of Rule 144 except that, with regard to the resale of securities of a reporting issuer, the current public information requirement in Rule 144(c) will apply for an additional six months after the six-month holding period requirement is met.[65] Therefore, a non-affiliate will no longer be subject to the Rule 144 conditions relating to volume limitations, manner of sale requirements, and filing Form 144.[66]

We believe that the complexity of resale restrictions may inhibit sales by, and imposes costs on, non-affiliates. Because Rule 144 is relied upon by many individuals to resell their restricted securities, we believe that it is particularly helpful to streamline and reduce the complexity of the rule as much as possible while retaining its integrity. We continue to believe that retaining the current public information requirement with regard to resales of restricted securities of reporting issuers for up to one year after the acquisition of the securities is important to help provide the market with adequate information regarding the issuer of the securities. In addition, we generally believe that most abuses in sales of unregistered securities involve affiliates of issuers[67] and securities of shell companies. As discussed below, we are codifying the staff's current interpretive position that Rule 144 cannot be relied upon for the resale of the securities of reporting and non-reporting shell companies.[68]

The final conditions applicable to the resale under Rule 144 of restricted securities held by affiliates and non-affiliates of the issuer can be summarized as follows:

[57] See 17 CFR 240.15c2–11.

[58] See, *e.g.*, comment letters on the 2007 Proposing Release from Brill 1; Cleary Gottlieb; Pink Sheets; and Weisman.

[59] See comment letters on the 2007 Proposing Release from ABA and Weisman.

[60] See, *e.g.*, comment letters on the 2007 Proposing Release from ABA; BAIS; Cleary Gottlieb; Fried Frank; and SCSGP.

[61] See comment letters on the 2007 Proposing Release from Argus Vickers Stock Research Corp. (''Argus''); Brill 1; and The Washington Service on the Form 144 requirement (''WS 2'').

[62] See comment letters on the 2007 Proposing Release from Brill 1 and WS 2.

[63] See comment letters on the 2007 Proposing Release from NASAA and Steinberg.

[64] Under the amendments, paragraph (k) of Rule 144 has been removed. The conditions that non-affiliates are required to meet for the sale of their securities under Rule 144 are now contained in paragraph (b)(1) of the rule.

[65] Some commenters requested us to state that the Commission would not object if the restricted securities legend were removed from securities held by a non-affiliate, after all the applicable Rule 144 conditions to resale have been met. See comment letters on the 2007 Proposing Release from Cleary Gottlieb; Financial Associations; and Weisman. In the past, the staff in the Division of Corporation Finance has expressed the view that ''it is not inappropriate for issuers to remove restrictive legends from securities that may be resold in reliance on Rule 144(k).'' See, *e.g., Toth Aluminum Corporation* (Oct. 31, 1988). Under the amendments that we are adopting, we do not object if issuers remove restrictive legends from securities held by non-affiliates after all of the applicable conditions in Rule 144 are satisfied. However, the removal of a legend is a matter solely in the discretion of the issuer of the securities. Disputes about the removal of legends are governed by state law or contractual agreements, rather than federal law.

[66] Although the Rule 144(e) volume limitations will no longer apply to resales of restricted securities by non-affiliates as a result of the amendments, an affiliate pledgor, donor, or trust settlor will be required to aggregate the amount of securities sold for the account of a pledgee, donee or trust, as applicable, even when there is no concerted action, in accordance with Rule 144(e)(3)(ii), (iii), and (iv) in order to determine the amount of securities that is permitted to be sold under Rule 144.

[67] Pink Sheets also noted in its letter that most of the abuses in transactions involving unregistered securities involve sales and purchases by affiliates of the issuers.

[68] See Section II.E.6 of this release.

	Affiliate or person selling on behalf of an affiliate	Non-affiliate (and has not been an affiliate during the prior three months)
Restricted Securities of Reporting Issuers.	*During six-month holding period*—no resales under Rule 144 permitted *After six-month holding period*—may resell in accordance with all Rule 144 requirements including: • Current public information, • Volume limitations, • Manner of sale requirements for equity securities, and • Filing of Form 144	*During six-month holding period*—no resales under Rule 144 permitted. *After six-month holding period but before one year*—unlimited public resales under Rule 144 except that the current public information requirement still applies. *After one-year holding period*—unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements.
Restricted Securities of Non-Reporting Issuers.	*During one-year holding period*—no resales under Rule 144 permitted *After one-year holding period*—may resell in accordance with all Rule 144 requirements including: • Current public information, • Volume limitations, • Manner of sale requirements for equity securities, and • Filing of Form 144	*During one-year holding period*—no resales under Rule 144 permitted. *After one-year holding period*—unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements.

3. Tolling Provision

In 1990, we eliminated a Rule 144 provision that tolled, or suspended, the holding period of a security holder maintaining a short position in, or any put or other option to dispose of, securities equivalent to the restricted securities owned by the security holder.[69] We eliminated this provision in conjunction with an amendment to broaden a security holder's ability to tack the holding periods of prior owners to the security holder's own holding period.[70]

We previously have expressed concern regarding the effect of hedging activities designed to shift the economic risk of investment away from the security holder with respect to restricted securities.[71] In the 1997 Proposing Release, we solicited comment on several alternatives designed to address these concerns.[72] Seven commenters recommended that we adopt measures to eliminate or restrict hedging activities during the holding period.[73] Six commenters recommended maintaining the status quo.[74] Six other commenters suggested that we adopt a safe harbor for certain hedging activities that would be deemed permissible under Rule 144.[75]

In the 2007 Proposing Release, we acknowledged a concern about the effect of hedging activities in connection with the adoption of a six-month holding period for securities of reporting issuers. We noted that, when we eliminated the tolling provision in 1990, the Rule 144 holding periods were longer.[76] We also expressed the view that the proposal to shorten the holding period to six months could make the entry into such hedging arrangements significantly easier and less costly because these arrangements would cover a much shorter period.[77] We therefore proposed to reintroduce a Rule 144 tolling provision that would have suspended the holding period for restricted securities of Exchange Act reporting issuers while a security holder engaged in certain hedging transactions.[78] However, we proposed that any suspension due to hedging would not have caused, under any circumstances, the holding period to extend beyond one year.

Because the proposed tolling provision also would have worked in conjunction with the Rule 144 provisions that permit tacking of holding periods, a selling security holder would have been required to determine whether a previous owner of the securities had engaged in hedging activities with respect to the securities, if the selling security holder wished to tack the previous owner's holding period to the holding period of the selling security holder. The proposed provision would have tolled the holding period during any period in which the previous owner held a short position or put equivalent position with respect to the securities, however, there would have been no tolling of the previous owner's holding period if the security holder for whose account the securities were to be sold reasonably believed that no such short or put equivalent position was held by the previous owner.

In connection with the proposed tolling provision, we also proposed other related changes to Rule 144. First, we proposed to require that information be provided in Form 144 regarding any short or put equivalent position held with respect to the securities prior to the resale of the securities. The second proposal related to the manner of sale requirements in paragraphs (f) and (g) of Rule 144.[79]

[69] See Release No. 33–6862 (Apr. 23, 1990) [55 FR 17933].

[70] "Tacking" the holding period is the ability of the security holder to include, under certain circumstances, the period that securities were held by a previous owner as part of his or her own holding period for the purposes of meeting the holding period requirement in Rule 144(d). Further discussion about tacking appears in Section II.E.2 of this release.

[71] For a discussion on hedging arrangements in prior releases, see Section IV.B of the 1997 Proposing Release and Section II.A of Release No. 33–7187 (June 27, 1995) [60 FR 35645].

[72] See the 1997 Proposing Release. In that release, we proposed five different alternatives: (1) make the Rule 144 safe harbor unavailable to persons who hedge during the restricted period; (2) independently of Rule 144, promulgate a rule that would define a sale for purposes of Section 5 to include specified hedging transactions; (3) adopt a shorter holding period during which hedging could not occur without losing the safe harbor; (4) reintroduce a tolling provision in Rule 144 similar to the provision that was included prior to 1990; or (5) maintain the status quo with no specific prohibition against hedging.

[73] See comment letters on the 1997 Proposing Release from ABA; AIMR; Argent; ASCS; Constantine Katsoris; Corporate Counsel; and Schwartz Investments.

[74] See comment letters on the 1997 Proposing Release from Bear, Stearns & Co., Inc.; BG&E; Intel Corporation ("Intel"); PaineWebber Incorporated; Wilkie Farr; and XXI Securities.

[75] See comment letters on the 1997 Proposing Release from Four Brokers; NY Bar; SIA; Merrill Lynch; Citibank; and Lehman Brothers.

[76] At that time, Rule 144 provided for a two-year holding period before a security holder could sell limited amounts of restricted securities, and a three-year period before a non-affiliate security holder could sell an unlimited amount of the securities.

[77] See the 2007 Proposing Release at Section II.B.2.b.

[78] We proposed to exclude from the holding period any period in which the security holder had a short position or had entered into a "put equivalent position," as defined by Exchange Act Rule 16a–1(h) [17 CFR 240.16a–1(h)], with respect to the same class of securities (or, in the case of nonconvertible debt, with respect to any nonconvertible debt securities of the same issuer).

[79] We proposed to amend Note (ii) to Rule 144(g)(3) [17 CFR 230.144(g)(3)] to supplement the

Continued

Several commenters objected to the proposed reintroduction of the tolling provision and suggested modifications to the proposed provision, if the Commission chose to adopt it.[80] Commenters objecting to the proposed tolling provision provided the following reasons, among others, why the Commission should not adopt the proposed tolling provision:

- Hedging transactions involve costs and risks for the security holder and do not entirely transfer risk of the economic investment of the securities;[81]
- Any concern that the Commission has about hedging activities immediately after the acquisition is outweighed by the belief that hedging activities can enhance private placements as a means of capital formation and should be allowed to continue because they do not raise substantial concerns about unregistered distributions;[82]
- In the current environment, a security holder may hold long and short positions across multiple trading desks and complex financial institutions and positions may change daily or even intra-day. The task of tracing and processing such positions would necessitate the development of costly custom software and hardware systems. Consequently, security holders might ultimately choose to hold the securities for the default one-year period rather than implement these costly systems, thereby frustrating the intent of the Commission in adopting the six-month holding period;[83]
- There is a natural ceiling on the amount of hedging activity in restricted securities because the supply of unrestricted securities is limited;[84]
- The Commission has adequate enforcement tools to address abuses in hedging with respect to restricted securities;[85] and
- The Commission's reasoning for eliminating the tolling provision in 1990 was that a single holding period running from the date of purchase from the issuer, or an affiliate of the issuer, is sufficient to prevent unregistered distributions to the public.[86] This reasoning still applies, even if the holding period is reduced to six months for securities of reporting issuers.[87]

Some commenters reasoned that if the Commission detects an increase in abuse after implementation of the revised holding period, as proposed, the Commission could modify its treatment of hedging activities.[88] This would be consistent with the approaches taken by the Commission when it first adopted Rule 144, and in 1997 when commenters recommended that the Commission gain more experience with the shortened holding periods before making additional revisions.[89]

After considering the comments, we are not adopting the proposed tolling provision and related amendments. We note, in particular, the comments asserting that, in the current environment, the tolling provision would unduly complicate Rule 144 and could require security holders or brokers to incur significant costs to monitor hedging positions for purposes of determining whether they have met the holding period requirement. This would frustrate our primary objectives to streamline Rule 144 and reduce the costs of capital for issuers. We will revisit the issue if we observe abuse relating to the hedging activities of holders of restricted securities.[90]

C. Amendments to the Manner of Sale Requirements Applicable to Resales by Affiliates

Before today's amendments, the manner of sale requirements in Rule 144(f) required securities to be sold in ''brokers' transactions'' [91] or in transactions directly with a ''market maker,'' as that term is defined in Section 3(a)(38) of the Exchange Act.[92] Additionally, the rule prohibits a selling security holder from: (1) Soliciting or arranging for the solicitation of orders to buy the securities in anticipation of, or in connection with, the Rule 144 transaction; or (2) making any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities.

In the 1997 Proposing Release, we proposed to eliminate the manner of sale requirements for the sale of both equity and debt securities alike, reasoning that the manner of sale requirements are not necessary to satisfy the purposes of Rule 144 and limit the liquidity of the security.[93] Some commenters opposed this proposal, asserting that brokers help ensure that selling security holders are complying with the applicable Rule 144 conditions to resale.[94] As discussed below, although we proposed to eliminate the manner of sale requirements only for debt securities and not equity securities in the 2007 Proposing Release, we requested comment on whether it would be appropriate to eliminate the manner of sale requirements for the sale of equity securities as well.

The comments were mixed on this point. One commenter strongly discouraged the elimination of the manner of sale requirements for equity securities,[95] while another supported such a change.[96] One commenter did not object to retaining the manner of sale requirements for resales of equity securities of affiliates, on the grounds that affiliates generally find the assistance of a broker useful in navigating compliance with Rule 144 and thus brokers serve a useful function

reasonable inquiry requirement by requiring a broker to inquire into the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account the securities are to be sold, if the securities have been held for less than one year, whether such person has made inquiries into the existence and character of any short position or put equivalent position held by the previous owner of the securities, and the results of such person's inquiries.

[80] See, *e.g.*, comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; Feldman; Financial Associations; Richardson Patel; Sichenzia; and Weisman.

[81] See, *e.g.*, comment letters on the 2007 Proposing Release from Feldman; Financial Associations; and Richardson Patel.

[82] See comment letter on the 2007 Proposing Release from ABA.

[83] See, *e.g.*, comment letter on the 2007 Proposing Release from Financial Associations.

[84] See comment letter on the 2007 Proposing Release from ABA.

[85] See, *e.g.*, comment letters on the 2007 Proposing Release from ABA and Financial Associations.

[86] See Release No. 33–6862.

[87] See comment letter on the 2007 Proposing Release from Financial Associations.

[88] See, *e.g.*, comment letters on the 2007 Proposing Release from Cleary Gottlieb; Financial Associations; and Sichenzia.

[89] See Release No. 33–5223 and Section I of this release.

[90] The Commission's staff has previously stated that, with respect to short sales in reliance on the safe harbor of Rule 144 where the borrower closes out using the restricted securities, all the conditions of Rule 144 must be met at the time of the short sale. See Questions 80 through 82 of Release No. 33–6099 (Aug. 2, 1979) [44 FR 46752, 46765]. In the Commission's view, the term ''sale'' under the Securities Act includes contract of sale. See Release No. 33–8591 (July 19, 2005) [70 FR 44722, 44765] and Release No. 34–56206 (August 6, 2007) [72 FR 45094]. The Commission has previously indicated that, in a short sale, the sale of securities occurs at the time the short position is established, rather than when shares are delivered to close out that short position, for purposes of Section 5 of the Securities Act. See, *e.g.*, Questions 3 and 5 of Release No. 33–8107 (June 21, 2002) [67 FR 43234] and Release No. 34–56206 n. 46 (Aug. 6, 2007) [72 FR 45094, 45096].

[91] Rule 144(g) defines the term for purposes of Rule 144.

[92] 15 U.S.C. 78c(a)(38).

[93] See Section III.C of the 1997 Proposing Release.

[94] See comment letters on the 1997 Proposing Release from Corporate Counsel; Matthew Crain; Katsoris; Merrill Lynch; Regional Bankers; SIA; and Smith Barney.

[95] See comment letter on the 2007 Proposing Release from Barron.

[96] See comment letter on the 2007 Proposing Release from Sullivan.

that is not unduly burdensome.[97] Instead of completely eliminating the manner of sale requirements, some commenters requested that we consider expanding the methods to sell the securities permitted by the manner of sale requirements.[98] For example, two commenters discussed amending the requirement to permit sales through alternative trading systems such as electronic venues where the broker's identity is anonymous prior to trade execution.[99]

In response to comments, we are adopting amendments to the manner of sale requirements that apply to resales of equity securities of affiliates.[100] We last made substantive amendments to the manner of sale requirements in 1978.[101] Since then, the growth of technological and other developments directed at meeting the investment needs of the public and reducing the cost of capital for companies have led us to refine the rules governing the trading of securities.[102] We believe that it is appropriate now to adopt two amendments to the manner of sale requirements so that the restrictions better reflect current trading practices and venues.

First, we are adopting a change to Rule 144(f) to permit the resale of securities through riskless principal transactions in which trades are executed at the same price, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee, and the rules of a self-regulatory organization permit the transaction to be reported as riskless.[103] We believe that these riskless principal transactions are equivalent to agency trades.[104] As with agency trades, in order to qualify as a permissible manner of sale under the revised rule, the broker or dealer conducting the riskless principal transaction must meet all the requirements of a brokers' transaction, as defined by Rule 144(g), except the requirement that the broker does no more than execute the order or orders to sell the securities as agent for the person for whose account the securities are sold. The broker or dealer must neither solicit nor arrange for the solicitation of customers' orders to buy the securities in anticipation of or, in connection with, the transaction, must receive no more than the usual and customary markup or markdown, commission equivalent, or other fee, and must conduct a reasonable inquiry regarding the underwriter status of the person for whose account the securities are to be sold.

Second, we are amending Rule 144(g) which defines ''brokers' transactions' for purposes of the manner of sale requirements. Under the definition of brokers' transactions, a broker must neither solicit nor arrange for the solicitation of customers' orders to buy the securities in anticipation of, or in connection with, the transaction. However, certain activities specified in three subparagraphs of Rule 144(g)(2) are deemed not to be a solicitation.[105] We are adding another subparagraph covering the posting of bid and ask quotations in alternative trading systems that will also be deemed not to be a solicitation. This new provision permits a broker to insert bid and ask quotations for the security in an alternative trading system, as defined in Rule 300 of Regulation ATS,[106] provided that the broker has published bona fide bid and ask quotations for the security in the alternative trading system on each of the last 12 business days.[107]

D. Changes to Rule 144 Conditions Related to Resales of Debt Securities by Affiliates

1. Comments Received on Proposed Amendments Relating to Debt Securities

In the 2007 Proposing Release, we proposed to eliminate the manner of sale requirements in Rule 144 with regard to sales of debt securities by affiliates.[108] We also requested comment on whether there were any other conditions in Rule 144, such as the volume limitations, to which debt securities should not be subject. In the 2007 Proposing Release, we included preferred stock and asset-backed securities in the ''debt securities'' category for purposes of the proposed elimination of the manner of sale requirements.

Four commenters expressly supported the proposal to eliminate the manner of sale requirements for resales of debt securities,[109] and we did not receive any comments objecting to the proposal. We also did not receive any comments objecting to the proposed inclusion of preferred stock and asset-backed securities in the definition of debt securities. We received a few comments that we should expand the definition of debt securities for the purposes of proposed changes to the manner of sale requirements.[110]

2. No Manner of Sale Requirements Regarding Resales of Debt Securities

We are adopting the amendments to eliminate the manner of sale requirements for resales of debt securities held by affiliates, as proposed.[111] We agree that, as financial intermediaries, brokers serve an important function as gatekeepers for promoting compliance with Rule 144,[112] and we are concerned that eliminating the manner of sale requirements for

[97] See comment letter on the 2007 Proposing Release from ABA.

[98] See, *e.g.*, comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; and Sullivan.

[99] See comment letters on the 2007 Proposing Release from ABA and Sullivan.

[100] Only affiliates are required to comply with the manner of sale requirements under the amendments that we are adopting.

[101] See Release No. 33–5979 (Sept. 19, 1978) [43 FR 43709] (Sept. 27, 1978) (the Commission amended Rule 144(f) to permit sales under the rule to be made directly to a market maker in lieu of selling through a broker).

[102] For example, in the second quarter of 2007, alternative trading systems handled approximately $1.3 trillion in volume of matched orders. (These amounts do not include orders that flow through a system, but are ultimately executed elsewhere). We obtained this data from information provided in Form ATS–R Quarterly Reports.

[103] See new Rule 144(f)(1)(iii). A ''riskless principal transaction'' is defined as a principal transaction where, after having received from a customer an order to buy, a broker or dealer purchases the security as principal in the market to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to the market to satisfy the order to sell. See new Note to Rule 144(f)(1).

[104] See also, *e.g.*, *SEC Interpretation: Commission Guidance on the Scope of Section 28(e) of the Exchange Act*, Interpretive Release No. 34–45194 (Dec. 27, 2001) [67 FR 6]. This treatment is also consistent with NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6420(d)(3)(B).

[105] See Release No. 34–5452 (Feb. 1, 1974; amended Feb. 21, 1974). These subparagraphs, as amended, are contained in paragraphs (g)(3)(i), (g)(3)(ii), and (g)(3)(iii) of Rule 144. Under the amendments, the previous paragraph (g)(2) has been redesignated as paragraph (g)(3), and the previous paragraph (g)(3) has been redesignated as paragraph (g)(4).

[106] 17 CFR 242.300.

[107] See new Rule 144(g)(3)(iv).

[108] As noted in Section II.B.3 above, under the amendments that we are adopting in this release, the manner of sale requirements do not apply to the resale of securities of a non-affiliate under Rule 144. The manner of sale requirements also do not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate, provided that the estate or beneficiary is not an affiliate of the issuer.

[109] See comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; Financial Associations; and Sullivan.

[110] See comment letter on the 2007 Proposing Release from ABA stating that the definition of debt should exclude any requirement that the preferred stock have a liquidation preference in excess of par.

[111] See 17 CFR 230.144(f). As discussed above, we also are eliminating the manner of sale requirements for resales of equity and debt securities by non-affiliates.

[112] Brokers also must comply with the criteria set forth in Rule 144(g) in order to claim the ''brokers'' transactions' exemption under Section 4(4) of the Securities Act.

equity securities would lead to abuse. However, we do not believe that the fixed income securities market raises the same concerns about abuse,[113] and are persuaded that the manner of sale requirements may place an unnecessary burden on the resale of fixed income securities.[114] Combined with the changes that we are making to the Rule 144(e) volume limitations, these amendments will permit holders of debt securities to rely on the Rule 144 to resell their debt securities in a way and amount that was not possible previously.

As proposed, our definition of debt securities in Rule 144 includes non-participatory preferred stock (which has debt-like characteristics) [115] and asset-backed securities (where the predominant purchasers are institutional investors including financial institutions, pension funds, insurance companies, mutual funds and money managers) [116] in addition to other types of nonconvertible debt securities. This definition of debt securities is consistent with the treatment of such securities under Regulation S.[117]

3. Raising Volume Limitations for Debt Securities

We also are adopting amendments to raise the Rule 144(e) volume limitations for debt securities. Before the amendments that we are adopting, under Rule 144(e), the amount of securities sold in a three-month period could not exceed the greater of: (1) One percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer, or (2) the average weekly volume of trading in such securities, as calculated pursuant to provisions in the rule.[118] In response to our request for comment regarding whether we should eliminate or revise any other conditions in Rule 144 with regard to debt securities, three commenters noted that the Rule 144(e) volume limitations effectively precluded resales of debt securities by affiliates.[119]

Debt securities generally are issued in tranches.[120] We agree that, prior to our amendments, the volume limitations in Rule 144 constrained the ability of debt holders to rely on Rule 144 for the resales of their securities. For the same reasons that we are eliminating the manner of sale requirements for debt securities, we believe that it is appropriate to adopt an alternative volume limitation that is specifically applicable to the resale of debt securities. We are amending Rule 144(e) to permit the resale of debt securities in an amount that does not exceed ten percent of a tranche (or class when the securities are non-participatory preferred stock), together with all sales of securities of the same tranche sold for the account of the selling security holder within a three-month period.[121] We believe that this new ten percent limitation provision will permit a more reasonable amount of trading in debt securities than the one percent limitation has permitted.[122] These revised volume limitations also apply to resales of non-participatory preferred stock or asset-backed securities, which are defined as debt securities for purposes of Rule 144.

E. Increase of the Thresholds That Trigger the Form 144 Filing Requirement for Affiliates

Before today's amendments, Rule 144(h) required a selling security holder to file a notice on Form 144 if the security holder's intended sale exceeded either 500 shares or $10,000 within a three-month period.[123] These filing thresholds had not been modified since 1972.[124] In the 1997 Proposing Release, we proposed to increase the filing thresholds to 1,000 shares or $40,000. Thirteen commenters supported raising the filing threshold and no commenters opposed the idea.[125] Some commenters suggested that we eliminate Form 144 altogether.[126] One commenter suggested raising the threshold to $100,000.[127] Another commenter suggested raising it to $250,000.[128]

In the 2007 Proposing Release, we proposed to increase the Form 144 filing thresholds to cover sales of 1,000 shares or $50,000 within a three-month period.[129] Some commenters specifically expressed support for raising the Form 144 filing thresholds.[130] One of these commenters recommended filing thresholds of 10,000 shares or $100,000, if the Commission chose to retain a Form 144 filing requirement for affiliates.[131]

We are adopting the increased Form 144 filing thresholds with some modification. As proposed, we are raising the dollar threshold to $50,000 to adjust for inflation since 1972.[132] After considering the comments, we are raising the share threshold to 5,000 shares, rather than the proposed 1,000 shares. We believe that the 5,000 share threshold is an appropriate alternate threshold for trades in amounts that may not reach the $50,000 dollar threshold, but that merit notice to the market.

In the 2007 Proposing Release, we also solicited comment on whether we should coordinate the Form 144 filing requirements with Form 4 filing

[113] We distinguish between debt and equity in the same way we distinguished debt and equity markets when we last amended Regulation S. There, we did not believe that the procedures and restrictions applicable to offerings of equity securities under Regulation S should be applicable to offerings of nonconvertible debt securities, reasoning that the nature of the trading markets for debt securities appears not to have facilitated similar abusive practices as the markets for equity securities. See *Offshore Offers and Sales*, Release No. 33–7505 (Feb. 17, 1998) [63 FR 9631].

[114] The March 2007 ABA Letter noted that debt securities generally are traded in dealer transactions in which the dealer seeks buyers for securities to fill sell orders instead of through the means prescribed in Rule 144(f).

[115] The definition of debt securities appears in amended Rule 144(a). ''Non-participatory preferred stock'' is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer.

[116] See Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

[117] See 17 CFR 230.901 through 230.905 and Release No. 33–7505.

[118] See 17 CFR 230.144(e)(1)(i), (ii), and (iii).

[119] See comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; and Sullivan.

[120] The term ''tranche'' is also used in the definition of ''distribution compliance period'' in Rule 902(f) of Regulation S. 17 CFR 230.902(f).

[121] See newly revised Rule 144(e)(2).

[122] Generally, because of the absence of an active trading market in debt securities, debt holders do not rely on the average daily trading volume test to sell their securities under Rule 144.

[123] 17 CFR 230.144(h).

[124] We note, however, that in 1978, the Commission shortened the relevant time period in Rule 144(e) for calculating the amount of securities to be sold under Rule 144 from six months to three months and made conforming changes to the Form 144 filing requirement. Release No. 33–5995 (Nov. 8, 1978) [43 FR 54229].

[125] See comment letters on the 1997 Proposing Release from ABA; ASCS; AT&T Corp. (''AT&T''); BG&E; Corporate Counsel; Merrill Lynch; Morgan Stanley; NY Bar; NY City Bar; Regional Bankers; SIA; Smith Barney; and Sullivan.

[126] See comment letters on the 1997 Proposing Release from ABA; Benesch, Friedlander, Coplan & Aronoff, LLP; NY Bar; NY City Bar; and Sullivan.

[127] See comment letter on the 1997 Proposing Release from ABA.

[128] See comment letter on the 1997 Proposing Release from NY Bar.

[129] Only affiliates of the issuer are required to file a notice of proposed sale on Form 144 when relying on Rule 144 under the amendments that we are adopting.

[130] See, *e.g.*, comment letters on the 2007 Proposing Release from ABA; Financial Associations; and SCSGP.

[131] See comment letter on the 2007 Proposing Release from ABA. ABA supported elimination of Form 144 but recommended these filing thresholds, if the Commission chose to retain it.

[132] The adjustment would be approximately $42,000 if based on the Personal Consumption Expenditures Chain-Type Price Index, as published by the Department of Commerce. In addition, if based on the Consumer Price Index, the adjustment would be approximately $50,000. To achieve a round number, we proposed to raise the filing threshold to $50,000.

requirements. Many commenters supported a combination of the two forms.[133] Although we are not adopting those changes today, we expect to issue a separate release in the future to provide affiliates that are subject to both the Form 4 and Form 144 filing requirements with greater flexibility in satisfying their requirements.

F. Codification of Several Staff Positions

In the 2007 Proposing Release, we proposed to codify several interpretive positions issued by the staff of the Division of Corporation Finance. We proposed to codify the first three staff positions listed below in both the 1997 Proposing Release and the 2007 Proposing Release, but we proposed to codify the last four staff positions listed below only in the 2007 Proposing Release.

Some commenters expressed general support for the proposed codifications of staff interpretations relating to Rule 144.[134] One commenter specifically expressed the view that the action should help to resolve any lingering confusion regarding the calculation of holding periods in the circumstances addressed by the interpretations.[135] We are adopting all of the codifications substantially as proposed. The codifications should make these interpretations more transparent and readily available to the public.

1. Securities Acquired Under Section 4(6) of the Securities Act Are Considered ''Restricted Securities''

In 1997, we first proposed to codify the Division of Corporation Finance's interpretive position that securities acquired from the issuer pursuant to an exemption from registration under Section 4(6) of the Securities Act[136] are considered ''restricted securities'' under Rule 144(a)(3).[137] We did not receive any comments on this proposal at the time. In the 2007 Proposing Release, we again proposed to codify this position. We did not receive any comments.

Section 4(6) provides for an exemption from registration for an offering that does not exceed $5,000,000 that is made only to accredited investors, that does not involve any advertising or public solicitation by the issuer or anyone acting on the issuer's behalf and for which a Form D has been filed.[138] Because the resale status of securities acquired in Section 4(6) exempt transactions should be the same as securities received in other non-public offerings that are included in the definition of restricted securities, we are of the view that securities acquired under Section 4(6) should be defined as restricted securities for purposes of Rule 144. Therefore, we are adopting an amendment to add securities acquired under Section 4(6) of the Securities Act to the definition of restricted securities, as proposed.[139]

2. Tacking of Holding Periods When a Company Reorganizes Into a Holding Company Structure

In 1997, we also proposed to codify the Division of Corporation Finance's interpretive position that holders may tack the Rule 144 holding period in connection with transactions made solely to form a holding company.[140] When ''tacking,'' holders may count the period during which they held the restricted securities of the predecessor company before the predecessor company reorganized into a holding company structure when calculating the holding period of the restricted securities of the holding company received in the reorganization. We did not receive any comments on this proposal.

We again proposed to codify this interpretive position in the 2007 Proposing Release. Two commenters recommended codification of the staff interpretive position covering tacking, in certain circumstances, in connection with the reincorporation of the issuer in a different state.[141] We did not receive any comments opposing this proposal.

We are adopting this amendment to Rule 144(d), as proposed.[142] This provision will permit tacking of the holding period if the following three conditions are satisfied:

- The newly formed holding company's securities were issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;
- Security holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor company, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and
- Immediately following the transaction, the holding company had no significant assets other than securities of the predecessor and its existing subsidiaries and had substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

In such transactions, tacking is appropriate because the securities being exchanged are substantially equivalent, and there is no significant change in the economic risk of the investment in the restricted securities. The amendment that we are adopting does not change the staff interpretive position that permits tacking in connection with the reincorporation of the issuer in a different state in certain situations.

3. Tacking of Holding Periods for Conversions and Exchanges of Securities

The 1997 Proposing Release proposed codifying the Division of Corporation Finance's position that, if the securities to be sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.[143] As noted in the 1997 release, Rule 144 does not state whether the surrendered securities must have been convertible by their terms in order for tacking to be permitted, which led to some confusion on how to calculate the Rule 144 holding period. We did not receive any comments on this proposal.

We again proposed this amendment to Rule 144(d)(3)(ii) in the 2007 Proposing Release. In addition, we proposed a note to this provision that clarifies the Division's position that if:

[133] See, *e.g.*, comment letters on the 2007 Proposing Release from ABA; BAIS; Brill 1; Fried Frank; Pink Sheets; Sichenzia; SCSGP; and Sullivan. The comment letters from ABA, BAIS, SCSGP and Sullivan advocated that the Commission should eliminate the Form 144 filing requirement; however, to the extent that we determine to retain any items required by Form 144, they provided suggestions regarding the proposal to combine Form 144 with Form 4.

[134] See comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; Financial Associations; Fried Frank; and Richardson Patel.

[135] See comment letter on the 2007 Proposing Release from Financial Associations.

[136] 15 U.S.C. 77d(6). Section 4(6) was included in the Securities Act pursuant to the Small Business Investment Incentive Act of 1980 [Pub. L. No. 96–477 (Oct. 21, 1980)].

[137] 17 CFR 230.144(a)(3). See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 104 (Rule 144(a)(3)), Question No. 104.03.

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

[139] See amendments to Rule 144(a)(3).

[140] See the Division of Corporation Finance's letter to Morgan, Olmstead, Kennedy & Gardner Capital Corporation (Jan. 8, 1988).

[141] See comment letters on the 2007 Proposing Release from Sichenzia and Sullivan.

[142] See new Rule 144(d)(3)(ix).

[143] See the Division of Corporation Finance's letter to Planning Research Corp. (Dec. 8, 1980).

• The original securities do not permit cashless conversion or exchange by their terms;

• The parties amend the original securities to allow for cashless conversion or exchange; and

• The security holder provides consideration, other than solely securities of the issuer, for that amendment,

then the newly acquired securities will be deemed to have been acquired on the date that the original securities were so amended.[144]

One commenter expressed support for this proposed amendment.[145] Another commenter provided a suggestion for a technical change to the proposed note, that the phrase ''so long as the conversion or exchange itself meets the conditions of this section,'' be deleted.[146] We are adopting the changes to Rule 144(d), substantially as proposed.[147] In response to comment, we are further clarifying the note to Rule 144(d)(3)(ii) to clarify that the newly acquired securities shall be deemed to have been acquired at the same time as the amendment to the surrendered securities, so long as, in the conversion or exchange, the securities to be sold were acquired from the issuer solely in exchange for other securities of the same issuer.

4. Cashless Exercise of Options and Warrants

Several commenters responding to the 1997 Proposing Release suggested that we codify the Division of Corporation Finance's position that, upon a cashless exercise of options or warrants, the newly acquired underlying securities are deemed to have been acquired when the corresponding options or warrants were acquired, even if the options or warrants originally did not provide for cashless exercise by their terms.[148]

In the 2007 Proposing Release, we proposed to revise Rule 144 to codify that position. We also proposed to add two notes to this new paragraph. As proposed, the first note would codify the Division's position that if:

• The original options or warrants do not permit cashless exercise by their terms; and

• The holder provides consideration, other than solely securities of the issuer, to amend the options or warrants to allow for cashless exercise,

then the amended options or warrants would be deemed to have been acquired on the date that the original options or warrants were so amended.[149] This treatment is analogous to our treatment of conversions and exchanges.

The second note would codify the Division's position that the grant of certain options or warrants that are not purchased for cash or property does not create an investment risk in a manner that would justify tacking the holding period for the options or warrants to the holding period for the securities received upon exercise of the options or warrants.[150] This is the case for options granted under an employee benefit plan. The note would clarify that, in such instances, the holder would not be allowed to tack the holding period of the option or warrant and would be deemed to have acquired the underlying securities on the date the option or warrant was exercised, if the conditions of Rule 144(d)(1) and Rule 144(d)(2) are met at the time of exercise.

Three commenters supported the codification of the staff interpretation relating to the cashless exercise of options and warrants.[151] Some commenters believed that the proposed rule should be expanded,[152] such as to include warrants and options that have only a *de minimis* exercise price.[153] One commenter suggested that we delete the phrase ''so long as the conditions of Rule 144(d)(1) and Rule 144(d)(2) are met at the time of exercise,'' in the second proposed note.[154]

We are adopting the amendments, substantially as proposed.[155] In response to comment, we have further clarified the second note to Rule 144 to make it clear that the newly acquired securities shall be deemed to have been acquired at the same time as the amendment to the options or warrants so long as the exercise itself was cashless.[156]

5. Aggregation of Pledged Securities

In response to suggestions from commenters on the 1997 proposals, we proposed in the 2007 Proposing Release to add a note that would address how a pledgee of securities should calculate the Rule 144(e) volume limitation condition.[157] The note would codify the Division of Corporation Finance's position that, so long as the pledgees are not the same ''person'' under Rule 144(a)(2), a pledgee of securities may sell the pledged securities without having to aggregate the sale with sales by other pledgees of the same securities from the same pledgor, as long as there is no concerted action by those pledgees.[158] As an example, assume that a security holder (the pledgor) pledges the securities he owns in Company A to two banks, Bank X and Bank Y (the pledgees). If the pledgor defaults:

• Upon default, Bank X does not have to aggregate its sales of Company A securities with Bank Y's sales of Company A securities unless Bank X and Bank Y are acting in concert, but

• Bank X individually still must aggregate its sales with the pledgor's sales, and

• Bank Y individually still must aggregate its sales with the pledgor's sales.

Provided that the loans and pledges are bona fide transactions and there is no concerted action among pledgees and no other aggregation provisions under Rule 144(e) apply, we do not believe that extra burdens on pledgees to track and coordinate resales by other pledgees are warranted.

We received no comments on this proposal, and we are adopting the amendment to Rule 144(e), as proposed.[159]

6. Treatment of Securities Issued by ''Reporting and Non-Reporting Shell Companies''

A blank check company is a company that:

• Is in the development stage;

• Has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified third party; and

• Issues penny stock.[160]

[144] See the Division of Corporation Finance's letter to Morgan Stanley & Co., Inc. (June 30, 1993).

[145] See comment letter on the 2007 Proposing Release from Feldman.

[146] See comment letter on the 2007 Proposing Release from Sullivan.

[147] See amendments to Rule 144(d)(3)(ii).

[148] See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 212 (Rule 144(d)(3)), Interpretation No. 212.01.

[149] See the Division of Corporation Finance's letter to Morgan Stanley & Co., Inc. (June 30, 1993).

[150] See the Division of Corporation Finance's letters to Morgan Stanley & Co., Inc. (June 30, 1993) and Malden Trust Corporation (Feb. 21, 1989).

[151] See comment letters on the 2007 Proposing Release from Cleary Gottlieb; Feldman; and Richardson Patel.

[152] See comment letters on the 2007 Proposing Release from Cleary Gottlieb; Financial Associations; Richardson Patel; and Weisman.

[153] See comment letters on the 2007 Proposing Release from Cleary Gottlieb and Financial Associations.

[154] See comment letter on the 2007 Proposing Release from Sullivan.

[155] See new Rule 144(d)(3)(x) and related notes.

[156] See Note 2 to Rule 144(d)(3)(x).

[157] Under the amendments that we are adopting, the volume limitations in Rule 144(e) would apply only to affiliates.

[158] See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 216 (Rule 144(e)(3)), Interpretation No. 216.01. See also the Division of Corporation Finance's letter to Standard Chartered Bank (June 22, 1987).

[159] See amendments to Rule 144(e)(3)(ii).

[160] 17 CFR 230.419. The term ''penny stock'' is defined in Exchange Act Rule 3a51–1 [17 CFR 240.3a51–1].

Such companies historically have provided opportunity for abuse of the federal securities laws, particularly by serving as vehicles to avoid the registration requirements of the securities laws.[161] Rule 419 under the Securities Act [162] was adopted in 1992 to control the extent to which such companies are able to access funds from a public offering.

In 2005, we amended Securities Act Rule 405 [163] to define a ''shell company'' to mean a registrant, other than an asset-backed issuer, that has:

(1) No or nominal operations; and

(2) Either:

- No or nominal assets;
- Assets consisting solely of cash and cash equivalents; or
- Assets consisting of any amount of cash and cash equivalents and nominal other assets.[164]

On January 21, 2000, the Division of Corporation Finance concluded in a letter to NASD Regulation, Inc. that Rule 144 is not available for the resale of securities initially issued by companies that are, or previously were, blank check companies.[165] In an effort to curtail misuse of Rule 144 by security holders through transactions in the securities of blank check companies, we proposed to codify this position with some modifications. First, we proposed to modify the staff interpretation to address securities of all companies, other than asset-backed issuers, that meet the definition of a shell company, including blank check companies. The category of companies to whom the staff interpretation was proposed to apply is broader than the Rule 405 definition of a ''shell company,'' however, as it would apply to any ''issuer'' meeting that standard, whereas the Rule 405 definition refers only to ''registrants.'' For purposes of the discussion in this release only, we call these companies, ''reporting and non-reporting shell companies.'' Under the proposed rule, a person who wishes to resell securities of a company that is, or was, a reporting or a non-reporting shell company, other than a business combination related shell company,[166] would not be able to rely on Rule 144 to sell the securities.

Several commenters provided comments on the proposal to codify this staff interpretation with some modification. Some commenters expressed support for the proposed codification,[167] with one commenter noting that most micro-cap frauds result from the purchase and sale of securities issued by shell companies.[168] Two commenters expressed concern that expanding the staff interpretation to shell companies would prohibit reliance on Rule 144 by security holders of businesses attempting to implement real business plans that technically meet the definition of a shell company, but are not blank check companies.[169] One commenter recommended that the Commission only preclude reliance on Rule 144 for the resale of securities if they were issued at the time the issuer was a shell company.[170]

We are adopting, as proposed, the amendment to prohibit reliance on Rule 144 for the resale of securities of a company that is a reporting or a non-reporting shell company.[171] Under the amended rules, Rule 144 will not be available for the resale of securities initially issued by either a reporting or non-reporting shell company (other than a business combination related shell company) or an issuer that has been at any time previously a reporting or non-reporting shell company, unless the issuer is a former shell company that meets all of the conditions discussed below.[172]

In another part of our proposal regarding the resale of securities of reporting and non-reporting shell companies, we proposed to modify the staff interpretation to make Rule 144 available for resales of securities of companies that were formerly shell companies under provisions that are similar to other provisions that permit the use of a Securities Act Form S–8[173] registration statement by reporting companies that were former shell companies.[174] Under the proposal, despite the general prohibition against reliance on Rule 144 with respect to securities acquired by shell companies or former shell companies, a security holder would have been able to resell securities subject to Rule 144 conditions if the issuer:

- Had ceased to be a shell company;
- Is subject to Exchange Act reporting obligations;
- Has filed all required Exchange Act reports during the preceding twelve months; and
- At least 90 days have elapsed from the time the issuer files ''Form 10 information'' reflecting the fact that it had ceased to be a shell company before any securities were sold under Rule 144.

''Form 10 information'' is equivalent to information that a company would be required to file if it were registering a class of securities on Form 10 or Form 20–F under the Exchange Act.[175] This information is ordinarily included in a Form 8–K if the former shell company has been filing Exchange Act reports.[176] As proposed, the Rule 144(d) holding period for restricted securities sold under this provision would have

[161] See Release No. 33–6932 (Apr. 28, 1992) [57 FR 18037].

[162] 17 CFR 230.419.

[163] 17 CFR 230.405.

[164] See Release No. 33–8587 (Jul. 15, 2005) [70 FR 42234].

[165] See the Division of Corporation Finance's letter to Ken Worm, NASD Regulation, Inc. (Jan. 21, 2000). In that letter, the Division stated that ''transactions in blank check company securities by their promoters or affiliates . . . are not the kind of ordinary trading transactions between individual investors of securities already issued that Section 4(1) [of the Securities Act] was designed to exempt.'' The Division stated its view that ''both before and after the business combination or transaction with an operating entity or other person, the promoters or affiliates of blank check companies, as well as their transferees, are 'underwriters' of the securities issued. . . . Rule 144 would not be available for resale transactions in this situation, regardless of technical compliance with that rule, because these resale transactions appear to be designed to distribute or redistribute securities to the public without compliance with the registration requirements of the Securities Act.''

[166] A ''business combination related shell company'' is defined in Securities Act Rule 405 as a shell company that is (1) formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or (2) formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction (as defined in § 230.165(f)) among one or more entities other than the shell company, none of which is a shell company.

[167] See, *e.g.*, comment letters on the 2007 Proposing Release from Feldman; Financial Associations; Parsons; Pink Sheets; and Williams.

[168] See comment letter on the 2007 Proposing Release from Pink Sheets.

[169] See comment letters on the 2007 Proposing Release from Sichenzia and Williams.

[170] See comment letter on the 2007 Proposing Release from Sichenzia.

[171] See new Rule 144(i).

[172] Rule 144(i) does not prohibit the resale of securities under Rule 144 that were not initially issued by a reporting or non-reporting shell company or an issuer that has been at any time previously such a company, even when the issuer is a reporting or non-reporting shell company at the time of sale. Contrary to commenters' concerns, Rule 144(i)(1)(i) is not intended to capture a ''startup company,'' or, in other words, a company with a limited operating history, in the definition of a reporting or non-reporting shell company, as we believe that such a company does not meet the condition of having ''no or nominal operations.''

[173] 17 CFR 239.16b.

[174] See Release No. 33–8587. These provisions are consistent with the Form S–8 provisions for shell companies, except that Form S–8 requires a former shell company to wait 60 days, rather than 90 days, before it is able to use the form to register securities.

[175] 17 CFR 249.210 and 17 CFR 249.220f. In another Commission release, we are rescinding Form 10–SB [17 CFR 249.210b]. See SEC Press Release No. 2007–233 (Nov. 15, 2007), available at *http://www.sec.gov/news/press/2007/2007-233.htm*.

[176] 17 CFR 249.308. Items 2.01(f) and 5.01(a)(8) of Form 8–K require a company in a transaction where the company ceases being a shell company to file a current report on Form 8–K containing the information (or identifying the previous filing in which the information is included) that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act.

commenced at the time that the Form 10 information was filed.

We are adopting this part of the amendments, with some modification.[177] We have modified the proposal to require at least one year to elapse after Form 10 information is filed with Commission before a security holder can resell any securities of an issuer that was formerly a shell company subject to Rule 144 conditions. We believe that the one-year period is necessary for investor protection given the comments relating to the abuse and micro-cap fraud occurring in connection with the securities of shell companies. Both restricted securities and unrestricted securities will be subject to the same one-year waiting period. Thus, under the amendments that we are adopting, Rule 144 is available for the resale of restricted or unrestricted securities that were initially issued by a reporting or non-reporting shell company or an issuer that has been at any time previously a reporting or non-reporting shell company, only if the following conditions are met:

- The issuer of the securities that was formerly a reporting or non-reporting shell company has ceased to be a shell company;
- The issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;
- The issuer of the securities has filed all reports and material required to be filed under Section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8–K reports (§ 249.308 of this chapter); and
- At least one year has elapsed from the time that the issuer filed current Form 10 type information with the Commission reflecting its status as an entity that is not a shell company.

One commenter requested clarification on when a Form 10 is deemed filed, if the staff is undertaking a review of the filing, and recommended that the Form 10 should be deemed filed when the information is filed initially with the Commission.[178] To promote consistency and to provide a date that security holders can rely upon, the Form 10 information will be deemed filed when the initial filing is made with the Commission, rather than when the staff of the Division of Corporation Finance has completed its review of the filing or an amendment is made in response to staff comments, for purposes of the amendments.[179]

Some commenters recommended that we permit security holders of non-reporting companies that have merged with a private operating company and therefore have ceased to be shell companies to be able to rely on Rule 144.[180] We are not adopting a provision to permit this, because we believe that Form 10 type information and Exchange Act reporting requirements are important in protecting against potential abuse.

7. Representations Required From Security Holders Relying on Exchange Act Rule 10b5–1(c)

Rule 10b5–1[181] under the Exchange Act defines when a purchase or sale constitutes trading ''on the basis of'' material nonpublic information in insider trading cases brought under Exchange Act Section 10(b)[182] and Rule 10b–5.[183] Specifically, a purchase or sale of a security of an issuer is ''on the basis of'' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. However, Rule 10b5–1(c) provides an affirmative defense that a person's purchase or sale was not ''on the basis of'' material nonpublic information. For this defense to be available, the person must demonstrate that:

- Before becoming aware of the material nonpublic information, he or she had entered into a binding contract to purchase or sell the securities, provided instructions to another person to execute the trade for the instructing person's account, or adopted a written plan for trading the securities;
- The contract, instructions or written trading plan satisfy the conditions of Rule 10b5–1(c); and
- The purchase or sale that occurred was pursuant to the contract, instruction, or plan.

Form 144 requires a selling security holder to represent, as of the date that the form is signed, that he or she ''does not know any material adverse information in regard to the current and prospective operations of the issuer of the securities to be sold which has not been publicly disclosed.'' The Division of Corporation Finance has indicated that a selling security holder who satisfies Rule 10b5–1(c) may modify the Form 144 representation to indicate that he or she had no knowledge of material adverse information about the issuer as of the date on which the holder adopted the written trading plan or gave the trading instructions. In this case, the security holder must specify that date and indicate that the representation speaks as of that date.[184]

In order to reconcile the Form 144 representation with Rule 10b5–1, we proposed to codify this interpretive position. Under the proposed amendments, Form 144 filers would be able to make the required representation as of the date that they adopted written trading plans or gave trading instructions that satisfied Rule 10b5–1(c). We did not receive any comments specifically on this proposal. We are adopting this amendment, as proposed.[185]

G. Amendments to Rule 145

Securities Act Rule 145[186] provides that exchanges of securities in connection with reclassifications of securities, mergers or consolidations or transfers of assets that are subject to shareholder vote constitute sales of those securities. Unless an exemption from the registration requirement is available, Rule 145(a) requires the registration of these sales. Rule 145(c) deems persons who were parties to such a transaction, other than the issuer, or affiliates of such parties to be underwriters. Rule 145(d) permits the resale, subject to specified conditions, of securities received in such transactions by persons deemed underwriters. In the 1997 Proposing Release, we proposed to eliminate the presumed underwriter and resale provisions in Rule 145(c) and (d). Many commenters supported the 1997 proposal.[187]

In the 2007 Proposing Release, we proposed amendments to Rule 145(c) and (d) that would:

[177] See new Rule 144(i)(2).

[178] See comment letter on the 2007 Proposing Release from Sichenzia.

[179] See new Rule 144(i)(3).

[180] See, *e.g.*, comment letters on the 2007 Proposing Release from Charles Nelson; Tom Russell; and Williams.

[181] 17 CFR 240.10b5–1.

[182] 15 U.S.C. 78j(b).

[183] 17 CFR 240.10b–5. As stated in Rule 10b5–1(a), the ''manipulative and deceptive devices'' prohibited by Section 10(b) and Rule 10b–5 include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

[184] See the Division of Corporation Finance's Manual of Publicly Available Telephone Interpretations, Fourth Supplement (May 30, 2001), at Rule 10b5–1; Form 144, Interpretation No. 2.

[185] See amendments to Form 144.

[186] 17 CFR 230.145.

[187] See comment letters on the 1997 Proposing Release from ABA; ASCS; AT&T; BG&E; Brobeck, Phleger & Harrison, LLP (''Brobeck''); Corporate Counsel; Intel; NY Bar; NY City Bar; SIA; Smith Barney; Sullivan; and Testa Hurwitz.

• Eliminate the presumed underwriter provision in Rule 145(c), except with regard to Rule 145(a) transactions that involve a shell company (other than a business combination related shell company); [188] and

• Harmonize the requirements in Rule 145(d) with the proposed provisions in Rule 144 that would apply to securities of shell companies.

Under the proposed rule, where a party to a Rule 145(a) transaction, other than the issuer, is a shell company (other than a business combination related shell company), the party and its affiliates could resell securities acquired in connection with the transaction only in accordance with Rule 145(d).

Five commenters expressly supported the proposed changes to Rule 145.[189] Two commenters requested that we reassess the impact of the proposed Rule 145 amendments on the staff's position that stock received in a reorganization that is exempt from registration pursuant to Section 3(a)(10) of the Securities Act [190] could be publicly resold pursuant to Rule 145(d)(2).[191]

After considering the comments, we believe that it is appropriate to adopt the amendments to Rule 145, as proposed. The presumptive underwriter provision in Rule 145 is no longer necessary in most circumstances. However, based on our experience with transactions involving shell companies that have resulted in abusive sales of securities, we believe that there continues to be a need to apply the presumptive underwriter provision to reporting and non-reporting shell companies and their affiliates and promoters. We are amending Rule 145 to eliminate the presumptive underwriter provision except when a party to the Rule 145(a) transaction is a shell company.[192]

Rule 145(c) now provides that any party, other than the issuer, to a Rule 145(a) transaction involving a shell company (but not a business combination related shell company), including any affiliate of such party, who publicly offers or sells securities of the issuer acquired in connection with the transaction, will continue to be deemed an underwriter.[193]

Under the amendments to Rule 145 that we are adopting, if the issuer has met the requirements of new paragraph (i)(2) of Rule 144,[194] the persons and parties deemed underwriters will be able to resell their securities subject to paragraphs (c), (e), (f), and (g) of Rule 144 after at least 90 days have elapsed since the securities were acquired in the transaction. After six months have elapsed since the securities were acquired in the Rule 145(a) transaction, the persons and parties will be permitted to resell their securities, subject only to the Rule 144(c) current public information condition, provided that the sellers are not affiliates of the issuer at the time of sale and have not been affiliates during the three months before the sale. After one year has elapsed since the securities were acquired in the transaction, the persons and parties will be permitted to resell their securities without any limitations under Rule 145(d), provided that they are non-affiliates at the time of sale and have not been affiliates during the three months before the sale.

In addition, we are adopting, as proposed, a note to paragraphs (c) and (d) of Rule 145 that paragraph (d) is not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Securities Act. [195] We have included a similar statement in the Preliminary Note to Rule 144. We also are adopting, as proposed, the clarification to the language in Rule 145(d) regarding the securities that were acquired in a transaction specified in Rule 145(a). [196]

H. Conforming and Other Amendments

1. Regulation S Distribution Compliance Period for Category Three Issuers

The purpose of the distribution compliance period in Regulation S [197] is to ensure that during the offering period and in the subsequent aftermarket trading that takes place offshore, the persons complying with the Rule 903 [198] safe harbor (issuers, distributors and their affiliates) are not engaged in an unregistered, non-exempt distribution of securities into the United States capital markets. [199] In the 2007 Proposing Release, we requested comment on whether to amend Regulation S to conform the one-year distribution compliance period in Rule 903(b)(3)(iii) for Category 3 issuers (U.S. reporting issuers) to the proposed six-month Rule 144(d) holding period, or to retain the one-year distribution compliance period.

Several commenters recommended revising the Regulation S distribution compliance period in Rule 903(b)(3)(iii) to coincide with the six-month holding period under a revised Rule 144. [200] Commenters reasoned, among other things, that such a revision is logical and would promote consistency among the rules. [201] We did not receive any comment letters objecting to such an amendment to Regulation S.

When Regulation S was amended in 1998, the distribution compliance period was revised to coincide with the Rule 144(d) holding period.[202] In making this revision, we noted that a distribution compliance period that is longer than the Rule 144 holding period is unnecessary and could be confusing to apply. For the same reason, we are amending Regulation S to conform the distribution compliance period in Rule 903(b)(3)(iii) for Category 3 reporting issuers to the amendments to the Rule 144 holding period.[203] As a result, U.S. reporting issuers will be subject to a distribution compliance period of six months under Regulation S.

[188] The terms ''shell company'' and ''business combination related shell company'' are defined in Securities Act Rule 405. See also Release No. 33–8587 (Jul. 15, 2005) [70 FR 42233].

[189] See comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; Fried Frank; Financial Associations; and SCSGP.

[190] 15 U.S.C. 77c(a)(10).

[191] See comment letters on the 2007 Proposing Release from Barron and Fried Frank.

[192] With respect to a transaction that is exempt from registration pursuant to Section 3(a)(10) of the Securities Act that falls within Rule 145(a), if any party to the transaction is a shell company, then any party to the transaction, other than the issuer, and its affiliates will be permitted to resell their securities in accordance with the restrictions of Rule 145(d). Also, the staff intends to issue a revised Staff Legal Bulletin No. 3 concurrently with the effective date of the amendments that we are adopting that will address the treatment of parties to a transaction and their affiliates that have acquired securities in a transaction exempt from registration pursuant to Section 3(a)(10) of the Securities Act.

[193] We are also adding the definition of ''affiliate'' to paragraph (e) and transferring the definition of ''party'' from paragraph (c) to paragraph (e).

[194] The requirement in the newly added Rule 144(i)(2) that Form 10 information be filed reflecting a company's status as no longer a shell company is fulfilled with respect to a Rule 145(a) transaction through the filing of the registration statement.

[195] See new Note to Rule 145(c) and (d).

[196] See amendments to Rule 145(d) relating to ''securities acquired in a transaction specified in paragraph (a) that was registered under the Act.''

[197] 17 CFR 230.901 through 230.905 and Preliminary Notes.

[198] See 17 CFR 230.903.

[199] See Release No. 33–7505.

[200] See comment letters on the 2007 Proposing Release from ABA; Cleary Gottlieb; Financial Associations; Fried Frank; Herbert Smith CIS LLP (''Herbert Smith''); London Forum; Parsons; and Sullivan.

[201] See, *e.g.*, comment letters on the 2007 Proposing Release from Cleary Gottlieb; Financial Associations; and London Forum.

[202] See Release No. 33–7505.

[203] See amendments to Rule 903(b)(3) of the Securities Act.

2. Underlying Securities in Asset-Backed Securities Transactions

In 2004, we adopted Securities Act Rule 190 to clarify when registration of the sale of underlying securities in asset-backed securities transactions is required.[204] One of the basic premises underlying asset-backed securities offerings is that an investor is buying participation in the underlying assets. Therefore, if the assets being securitized are themselves securities under the Securities Act (commonly referred to as a ''resecuritization''), the offering of the underlying securities must itself be registered or exempt from registration under the Securities Act. Rule 190 provides the framework for determining if registration of the sale of these underlying assets is required at the time of the registered asset-backed securities offering.

One of the requirements of Rule 190 is that the depositor must be free to publicly resell the securities without registration under the Securities Act.[205] Before the amendments that we are adopting, this provision noted as an example that if the underlying securities are Rule 144 restricted securities, under the conditions of the previous Rule 144(k), at least two years must have elapsed from the date the underlying securities were acquired from the issuer, or an affiliate of the issuer, and the date they are pooled and resecuritized pursuant to Rule 190.

The changes to Rule 144 with no concurrent revision to Rule 190 would have allowed privately placed debt or other asset-backed securities to be publicly resecuritized in as little as six months after their original issuance without registration of the underlying securities.[206] Given that Rule 190 addresses the public distribution of privately placed securities via resecuritization transactions, we proposed to revise Rule 190 to retain the current two-year period for resecuritizations that do not require registration of the underlying securities.[207]

A particular issuance of asset-backed securities often involves one or more publicly offered classes (*e.g.*, classes rated investment grade) as well as one or more privately placed classes (*e.g.*, non-investment grade subordinated classes). In most instances, the subordinated classes act as structural credit enhancement for the publicly offered senior classes by receiving payments after, and therefore absorbing losses before, the senior classes. These unregistered asset-backed securities are typically rated below investment grade, or are unrated, and as such could not be offered on Form S–3. They typically are not fungible with registered securities from the same offering and are held by very few investors. Further, the trust or issuing entity usually ceases reporting under the Exchange Act with respect to the publicly offered classes after its initial Form 10–K is filed. We understand that the privately placed subordinated securities in these transactions are often the types of securities that are pooled and resecuritized into new asset-backed securities.[208]

One commenter provided comments on the proposal to retain the two-year period for resecuritizations that do not require registration of the underlying securities.[209] The commenter submitted that the proposed two-year holding period for resecuritizations should be shortened to no more than six months (or twelve months, if tolling were to be reinstituted). With respect to non-asset-backed securities (*e.g.*, corporate debt), the commenter stated that we should permit securitization without registration during the revised period, as these securities face fewer complications and are not the focus of our concerns.

Due to the particular circumstances of asset-backed securities and our experience with a two-year period under both Regulation AB and the prior staff positions that were codified by those rules, we are not making any changes to shorten the current two-year holding period for restricted securities that are to be resecuritized in publicly registered offerings. In light of the changes that we are making to Rule 144, we are amending Rule 190 to provide that if the underlying securities are restricted securities, Rule 144 is available for the sale of the securities in the resecuritization, if at least two years have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or from an affiliate of the issuer of the underlying securities.[210] Of course, the underlying securities could still be resecuritized if they do not meet this requirement; their sale would need to be concurrently registered with the offering of the asset-backed securities on a form for which the offering of the class of underlying securities would be eligible. In addition, nothing in Rule 190, as amended, will lengthen the six-month holding period of the underlying securities under Rule 144 for resales other than in connection with publicly registered resecuritizations.

3. Securities Act Rule 701(g)(3)

Securities Act Rule 701(g)(3)[211] outlines the resale limitations for securities issued under Rule 701. The limitations for resales by non-affiliates includes references to paragraphs (e) and (h) of Rule 144, which under the amendments that we are adopting no longer apply to resales by non-affiliates. We received one comment on the conforming change, and the commenter concurred with the proposed amendment to Securities Act Rule 701(g)(3).[212] Accordingly, we believe that it is appropriate to conform the resale restrictions of securities acquired pursuant to employee benefit plans under Rule 701 of the Securities Act. We are adopting the amendment to remove references to Rule 144(e) and (h) from Rule 701.[213]

III. Paperwork Reduction Act

A. Background

Our amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[214] We submitted the amendments to Form 144 to the Office of Management and Budget (OMB) for review in accordance with the PRA.[215] OMB has approved the revision. The title for the information collection is ''Notice of Proposed Sale of Securities Pursuant to Rule 144 under the Securities Act of 1933'' (OMB Control No. 3235–0101). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

The primary purpose of this collection of information is the disclosure of a proposed sale of

[204] 17 CFR 230.190 and Release No. 33–8518.

[205] 17 CFR 230.190(a)(3).

[206] Although the asset-backed securities we are discussing may be privately placed, the issuing trust will have also registered the sale of other asset-backed securities and may have a reporting obligation under Section 15(d) of the Exchange Act for some time.

[207] This change would not in any way impact the disclosure requirements for resecuritizations.

[208] See Saskia Scholtes, *Left in the Dark on Debt Obligations,* FT.com (Mar. 27, 2007) (describing privately placed collateralized debt obligations (CDOs) vehicles used to repackage portfolios of other debt and noting that ''the biggest category of deals, at 44%, consisted of CDOS backed by asset-backed securities such as those backed by subprime mortgages'').

[209] See comment letter on the 2007 Proposing Release from Financial Associations.

[210] See amendments to Rule 190(a) of the Securities Act.

[211] 17 CFR 230.701(g)(3).

[212] See comment letter on the 2007 Proposing Release from ABA.

[213] See amendments to Rule 701(g)(3) of the Securities Act.

[214] 44 U.S.C. 3501 *et seq.*

[215] See 44 U.S.C. 3507 and 5 CFR 1320.11.

securities by security holders deemed not to be engaged in the distribution of the securities and therefore not underwriters. Form 144 may be filed in paper or electronically using the EDGAR filing system. Form 144 filings are publicly available. Persons reselling securities in reliance on Rule 144 are the respondents to the information required by Form 144. The information collection requirements imposed by Form 144 are mandatory.

B. Summary of Amendments

In the 2007 Proposing Release, we proposed an amendment to the Form 144 filing requirement to eliminate the need for non-affiliates of the issuer to file Form 144 in order to sell their securities under Rule 144. In addition, the proposal would have raised the filing threshold for Form 144 to 1,000 shares or $50,000 worth of securities during a three-month period. Currently, the Form 144 filing threshold is 500 shares or $10,000. The proposed amendments also included two other minor changes to Form 144.[216]

The 2007 Proposing Release included a PRA analysis. We received one comment letter addressing this analysis. The commenter noted that our estimate of burden hours necessary to complete a notice on Form 4 is 0.5 hours, while we estimate that it takes 2.0 burden hours to complete Form 144.[217] This commenter believed our estimates for the two forms should be comparable. Because this commenter estimated that it takes only three minutes on average to key and proof Form 144 data items, the commenter believed that 0.5 hours is probably a more accurate estimate of the burden hours needed to complete the Form 144.

In addition, in response to comment, we are raising the thresholds that trigger a Form 144 filing requirement to 5,000 shares or $50,000 of securities within a three-month period, from the proposed thresholds of 1,000 shares or $50,000. Therefore, we are adjusting our paperwork burden estimates for Form 144.

C. Revised Burden Estimates

Due to comment and the changes that we are adopting, we are publishing revised burden estimates for Form 144. Currently, we estimate that 60,500 notices on Form 144 are filed annually for a total burden of 121,000 hours.[218] As noted in the proposing release, the amendments that eliminate the need for non-affiliates to file Form 144 notices will decrease the annual Form 144 filings by approximately 45%. As a result, we estimate that the number of annual Form 144 filings will be reduced from 60,500 filings to 33,373 filings.[219]

In addition, we estimate that increasing the Form 144 filing thresholds from 500 shares or $10,000 to 5,000 shares or $50,000 will further reduce the number of Form 144 filings that we receive annually by approximately 30% (10,012 fewer filings).[220] After considering the comment letter that we received on the current PRA estimate for Form 144, we estimate that each notice on Form 144 imposes a burden for PRA purposes of one hour. Therefore, under these revised estimates, the amendments that we are adopting will reduce the burden on selling security holders who sell the securities under Rule 144 by a total of approximately 37,139 burden hours.

D. Solicitation of Comments

Pursuant to 44 U.S.C. 3506(c)(2)(A), we request comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–11–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–11–07, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC 20549–0609. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IV. Cost-Benefit Analysis

A. Background

Rule 144 under the Securities Act of 1933 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. Specifically, a selling security holder is deemed not to be an underwriter under Section 2(a)(11), and therefore may take advantage of the Section 4(1) exemption and need not register its sale of securities, if the sale complies with the provisions of the rule. Securities Act Rule 145 requires Securities Act registration of certain types of business combination transactions, unless an exemption from the registration requirement is available. Rule 145 contains a safe harbor provision similar to Rule 144 for presumed underwriters who receive securities in such a business combination transaction. Form 144 is required to be filed by persons intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three-month period exceeds specified thresholds. The primary purpose of the form is to publicly disclose the proposed sale of securities by persons deemed not to be engaged in the distribution of the securities.

B. Description of Amendments

We are adopting, substantially as proposed, amendments to Rule 144, Rule 145, and Form 144 that will accomplish the following:

- Simplify the Preliminary Note to Rule 144 and the text of Rule 144, using plain English principles;
- Shorten the Rule 144(d) holding period for restricted securities of Exchange Act reporting issuers to six months for both affiliates and non-affiliates;

[216] We proposed to amend Form 144 to include information regarding security holders' hedging activities and to allow security holders to represent that they do not know of material adverse information about the company as of the date they adopt a plan under Exchange Act Rule 10b5–1. We are adopting the amendment to Form 144 regarding the representation that the security holder does not know of material adverse information about the company as of the date that he or she adopts a plan under Exchange Act Rule 10b5–1.

[217] See comment letter on the 2007 Proposing Release from Washington Service on PRA estimates (''WS 1'').

[218] This reflects current OMB estimates.

[219] The Office of Economic Analysis obtained data from the Thomson Financial Wharton Research Database. The estimate is based on information contained in notices on Form 144 filed in 2005.

[220] This estimate is based on information contained in notices on Form 144 filed in 2005.

• Significantly reduce requirements applicable to non-affiliates of reporting and non-reporting issuers so that:

• Non-affiliates of reporting issuers will be subject only to the current public information requirement after meeting the six-month holding period for restricted securities of these issuers and up until one year since the date they acquired the restricted securities from the issuer or affiliate of the issuer; and

• Non-affiliates of non-reporting issuers will be able to resell restricted securities of these issuers after satisfying a one-year holding period without having to comply with any other condition of Rule 144;

• For affiliate sales:

• Revise the ''manner of sale'' limitations,

• Eliminate the ''manner of sale'' limitations with respect to debt securities,

• Raise the volume limitations for debt securities, and

• Increase the thresholds that trigger a Form 144 filing requirement;

• Codify staff interpretive positions, as they relate to Rule 144, concerning the following issues:

• Inclusion of securities acquired in a transaction under Section 4(6) of the Securities Act in the definition of ''restricted securities,''

• The effect that creation of a holding company structure has on a security holder's holding period,

• Holding periods for conversions and exchanges of securities,

• Holding periods for cashless exercise of options and warrants,

• Aggregation of a pledgee's resales with resales by other pledgees of the same security for the purpose of determining the amount of securities to be sold,

• The extent to which securities issued by reporting and non-reporting shell companies are eligible for resale under Rule 144, and

• Representations required from security holders relying on Exchange Act Rule 10b5–1(c); and

• Eliminate the presumptive underwriter provision in Securities Act Rule 145, except for transactions involving a shell company, and revise the resale provisions for presumed underwriters in that rule.

C. Benefits

We believe that the amendments will reduce the cost of complying with Rules 144 and 145. We examined the Forms 144 that were filed with the Commission since 1997.[221] In 2006, the volume of transactions filed under Rule 144 exceeded $71 billion, and more than 50% of U.S. public companies, large and small alike, every year have had at least one transaction reported on Form 144. Reducing the burden associated with these transactions can reduce the cost of capital to these companies.

One item on Form 144 requires security holders to provide information on the nature of the acquisition transaction. Some Form 144 filers acquire their securities from the issuer as a private investment, while others receive the securities as part of their employee awards, or as a form of payment for services to the issuer. Reducing the burden associated with selling these securities not only can reduce the cost of raising capital, but also may increase the value of these securities in non-cash transactions and thereby may reduce the cost of services and employment.

For the most part, transactions that have been reported on Form 144 have been small. In 2006, about 90% of the transactions had a market value of less than $2 million and 99% of these transactions had a market value of less than $20 million. More than half of the investors report total annual transactions of a market value of less than $240,000 with any specific issuer. Thus, reducing the costs associated with filing Form 144 and raising the thresholds that trigger a Form 144 filing requirement are likely to affect a large number of investors.

We expect that the increase in the value of these securities will come from several sources under the amendments we are adopting. The first is the increase in the liquidity of the securities. Investors, suppliers, or employees who are restricted from selling securities and who cannot hedge their positions are generally exposed to more risk than those who are not subject to such limitations, and generally require higher compensation (or a larger discount with respect to the securities) for this risk.[222] We also should expect that the longer the non-trading period, the higher the premium that investors will charge for their lack of liquidity.[223] Thus, reducing the time limit for selling these securities in the market is likely to reduce the discount that investors will charge for these securities, or the amount of securities that the issuer will need to provide for services. The actual reduction in this cost of capital will depend on the extent to which the six-month limit has a binding impact on security holders' decisions to resell their securities, and the extent to which investors, employees, or service providers can protect themselves against such exposure.

Commenters expressed support for the belief that the proposals would increase liquidity for issuers and make capital investment more attractive without sacrificing investor protection.[224] Some commenters also stated that the proposals would decrease the cost of capital for smaller companies.[225] One commenter noted that if the proposals are adopted, companies will have greater financing options, which will save them time and resources.[226] One commenter noted that the reduction of the holding period requirement will reduce costs involved in any private investment in public equity financings, since investors will be incurring less risk in holding restricted securities.[227]

Also, resale transactional costs for non-affiliate selling security holders should decrease as a result of the

[221] These filings were obtained through Thomson Financial's Wharton Research Database which includes Forms 144 filed from 1996 through 2007.

[222] There is also evidence that the non-trading period is associated with the premium that investors charge for lack of liquidity. See, for example, Silber, W.L., *Discounts on restricted stock: The impact of illiquidity on stock prices,* Financial Analysts Journal, 47, 60–64 (1991). Several studies have attempted to separate the discount associated with the non-transferability of the shares from other factors that affect the discount. See, *e.g.,* Wruck, K.H., *Equity Ownership Concentration and Firm Value, Evidence from Private Equity Financings,* Journal of Financial Economics, 23, 3–28 (1989); Hertzel, M., and R.L. Smith, *Market Discounts and Shareholder Gains for Placing Equity Privately,* Journal of Finance, 459–485 (1993); Bajaj, M., Denis, D., Ferris, S.P., and A. Sarin, *Firm Value and Marketability Discounts,* Journal of Corporate Law, 27, 89–115 (2001); Finnerty, J.D., *The Impact of Transfer Restrictions on Stock Prices* (Fordham U. Working Paper, 2002). The average discounts attributed to lack of transferability across these studies is estimated between 7% and 20%. Among the other factors that could affect the discount are the amount of resources that private investors need to expend to assess the quality of the issuing firm or to monitor the firm, the ability of the investors to diversify the risk associated with the investment, whether the investors are cash constrained, and the financial situation of the firm.

[223] We are not aware of any empirical work that examines the effect of shortening the holding period in Rule 144 on the discount. Longstaff calculates an upper bound for percentage discounts for lack of marketability. According to his model, drops in a restriction from two years to one year and from one year to 180 days are each associated with a 30% drop in the discount. Longstaff, F.A., *How Much Can Marketability Affect Security Values?,* Journal of Finance, 50, 1767–1774 (1995).

[224] See, *e.g.,* comment letters on the 2007 Proposing Release from Financial Associations; Richardson Patel; and Roth.

[225] See, *e.g.,* comment letters on the 2007 Proposing Release from Pink Sheets and Sichenzia.

[226] See comment letter on the 2007 Proposing Release from Parsons.

[227] See comment letter on the 2007 Proposing Release from Weisman.

removal of all conditions other than the holding period condition and the current public information condition applicable to non-affiliates of reporting issuers. Reducing restrictions on resales by non-affiliates should streamline the rule and reduce the complexity of the rule. This and other simplifications of Rule 144 and its Preliminary Note should make it easier to understand and follow, reducing the time that investors must spend analyzing whether or not they can rely on the rule as a safe harbor from the requirement to register the resale of their securities. The differences in holding period conditions between resales of securities of reporting issuers and resales of securities of non-reporting issuers, however, adds some complexity to the rule that may diminish the effect of simplifying other aspects of the rule.

Under the amendments, non-affiliates no longer are required to file Form 144 or comply with the manner of sale requirements and volume limitations, after the Rule 144(d) holding period requirement is met. Therefore, they will save the cost of preparing and filing Form 144, as well as the transactional costs related to complying with the manner of sale requirements and volume of sale limitations. As noted above, we estimate that the amendments reducing the restrictions applicable to non-affiliates will decrease the annual Form 144 filings by approximately 45%.

In addition, the increase in the Form 144 filing thresholds should further reduce the number of transactions for which Form 144 needs to be filed for proposed sales of securities held by affiliates of the issuer. This will eliminate the cost of preparing and filing the form for transactions that fall below the new thresholds.

The elimination of the manner of sale requirements, combined with the relaxation of volume limitations, applicable to resales of debt securities will reduce costs for debt security holders. It is difficult to estimate the amount of reduction. Among the Forms 144 filed with the Commission in 2005, we found at least 200 filings covering a sale of debt securities, although we believe the actual number of debt securities resales relying on Rule 144 may be higher than this.[228] The elimination of the manner of sale requirements for resales of debt securities may also reduce brokers' fees and, therefore, result in a reduction of revenue for brokers.

In the 2007 Proposing Release, we requested comment on whether to eliminate the manner of sale requirements also for resales of equity securities. After considering the comments, we are retaining and amending the manner of sale requirements for resales of equity securities by affiliates. We believe that the amendments we are adopting will benefit investors and companies by modernizing Rule 144 so that it better reflects current trading practices and venues for sales of securities.[229]

The codification of existing staff interpretive positions should not create added cost to companies or investors because, substantively, there is no expected change in practice as a result of the codification.[230] However, these codifications should provide substantial benefit to the investing community by clarifying and better publicizing the staff's positions. Greater clarity and transparency of our rules should reduce security holders' transactional costs by eliminating uncertainty and reducing the need for legal analysis. We received one comment letter in support of this reasoning, noting that codification of the staff's interpretive positions should help to resolve any lingering confusion and assist in making Rule 144 more readily understandable to market participants.[231] Another commenter noted that the codification of staff interpretations should reduce legal research costs for those who are considering the question for the first time.[232]

The amendments to Rule 145 remove what we believe are unnecessary restraints on the resale of securities by parties, or their affiliates, to a merger, recapitalization, or other transaction listed in Rule 145(a). The amendments to Rule 145 will reduce costs incurred by companies, parties to the transaction, and their affiliates to comply with the resale and other restrictions of the rule. Retaining the presumptive underwriter provision for transactions involving shell companies is intended to preserve for investors protection against manipulative practices or abusive sales by parties to the transaction and their affiliates after the completion of the Rule 145 transaction.

D. Costs

Relative to other options, the choice to register equity securities is attractive to issuers, because issuers can assure investors that there will be a liquid aftermarket for their equity securities. However, in the 2007 Proposing Release, we noted that reducing the requirements under Rule 144 might also cause a substitution effect, where companies might choose to rely more on private transactions than on public transactions to raise capital. Also, reducing the requirements under Rule 144 could also lead to the movement of certain investors from public transactions to private transactions.

We also acknowledge that there is the risk that the market will not be informed about the nature of these transactions, given that these transactions are not required to be registered and given the changes to the Form 144 filing requirements. The market may also be less informed, given that restricted securities of reporting companies could be resold by non-affiliates earlier without satisfying the condition that current information on the issuer of the securities be publicly available, and restricted securities of non-reporting companies could be resold by non-affiliates without current information on the issuer ever being publicly available. This, in return, could lead to a less efficient price formation. Direct negotiated deals with companies could also lead to informational advantage of some investors. The effect of the amendments on these movements and their effect on investor wealth or on issuers' cost of capital are thus subject to many factors.

Under the amendments we are adopting, with respect to securities of reporting issuers, after the six-month holding period is satisfied, non-affiliates of the issuer will be subject, for an additional six months, only to the condition requiring the availability of adequate current information on the issuer. After one year, non-affiliates of both reporting and non-reporting issuers will be permitted to sell their restricted securities freely without being subject to any other Rule 144 condition. We

[228] We base the estimate on number of filings that indicated that the securities were debt securities in the section of Form 144 that requests information on the nature of the acquisition transaction.

[229] For example, under the amendments, the posting of bid and ask prices in alternative trading systems will not be considered a solicitation proscribed by Rule 144(g), provided that the broker has published bona fide bid and ask quotations for the security in the alternative trading system on each of the last twelve days. As noted above, trading in alternative trading systems has become increasingly common such that, in the second quarter of 2007, alternative trading systems handled approximately $1.3 trillion in volume of matched orders. We obtained this data from information provided in Form ATS-R Quarterly Reports.

[230] We are, however, modifying the staff interpretation relating to the treatment of reporting and non-reporting shell companies to allow resales of securities of former shell companies one year after Form 10 information is filed reflecting the issuer of the securities has ceased to be a shell company.

[231] See comment letter on the 2007 Proposing Release from Financial Associations.

[232] See comment letter on the 2007 Proposing Release from ABA.

received comments in support of the proposed amendments regarding non-affiliates, as well as a few comments objecting to some of the changes. Some commenters objected to the aspect of the proposed amendments that would allow non-affiliates to resell their restricted securities after the holding period without being required to comply with the manner of sale requirements,[233] or the Form 144 filing requirement,[234] for an additional year. Another commenter was concerned that, for sales of securities of a non-reporting company, relieving non-affiliates from compliance with Rule 144's existing conditions, including the current public information condition, would lead to abuse.[235] We did not receive comments quantifying the effect of the proposed amendments on investor wealth or on cost of capital.

While we acknowledge that these are potential costs of the amendments that we are adopting, we continue to believe that they are justified by the potential benefits of the amendments and may not be significant in the aggregate. As stated in the 2007 Proposing Release, there is some evidence that, on average, the announcement of resales under Rule 144 by security holders has no adverse effect on stock prices, suggesting that the market does not attribute an informational advantage to these security holders at the time of selling.[236] Second, the rule, as amended, continues to impose several conditions to selling restricted securities by affiliated investors to alleviate these concerns.

One commenter expressed concern about the extent of the reduction of the restrictions for non-affiliates and contended that the changes will shift the market value of a company's securities away from the security holders who have held the securities for a longer time period and ''into the pockets of the security holders'' who are able to sell their securities without limitation after holding them for six months.[237] However, we believe that the possible impact that such a change could have is likely temporary and not significant. Also, to the extent that privately negotiated deals give private investors lucrative terms at the expense of public investors, public investors may avoid such companies, and these companies may eventually be worse off.

V. Promotion of Efficiency, Competition and Capital Formation

Securities Act Section 2(b)[238] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider in addition to the protection of investors whether the action will promote efficiency, competition, and capital formation.

The amendments are intended to reduce regulatory requirements for the resale of securities and simplify the process of reselling such securities. Before today's amendments, a security holder who wished to rely on the Rule 144 safe harbor for the resale of restricted securities had to wait until at least one year after the securities were last sold by the issuer or an affiliate before any securities could be sold under Rule 144. The amendments to Rule 144 will reduce this holding period requirement to six months for the resale of restricted securities of Exchange Act reporting companies. Restricted securities of non-reporting companies will continue to be subject to a one-year holding period requirement.

After considering the comments on the 2007 Proposing Release, we continue to believe that the shorter holding period requirement for restricted securities of reporting companies will increase the liquidity of securities sold in private transactions.[239] This could result in increased efficiency in securities offerings to the extent that companies are able to sell securities in private offerings at prices closer to prices that they may obtain in public markets, without the need to register those securities, and otherwise obtain better terms in private offerings. We also believe that this will promote capital formation, particularly for smaller companies, because the amendments will increase the liquidity of securities sold in private transactions. The amendments should increase a company's ability to raise capital in private securities transactions, which may improve the competitiveness of those companies, particularly smaller businesses that do not have ready access to public markets.

The other amendments to Rule 144 generally also should increase efficiency and assist in capital formation. We believe that the elimination of most of the Rule 144 conditions applicable to non-affiliates may further increase the liquidity of privately sold securities. We anticipate that the elimination of the manner of sale requirements for debt securities and the amendments to the volume limitations will provide debt security holders with greater flexibility in the resale of their securities, thereby increasing efficiency.

As noted above, several commenters supported the proposed amendments because they promote capital formation, noting that they enhance the ability to raise capital for issuers, and, in particular, smaller issuers.[240] One commenter, however, noted that the codification of the staff interpretation relating to reporting and non-reporting shell companies will adversely affect small business capital formation.[241] We are, however, modifying the staff interpretation to permit resales of securities of former reporting and non-reporting shell companies under certain circumstances. Also, we believe that the impact on small business capital formation due to the amendments will be limited, given that we believe there will not be a substantial change in existing practices, and the interest of investor protection is paramount where we believe there may be significant potential for abuse.

Several commenters noted in their letters that the Form 144 filing requirement imposes a burden on selling security holders.[242] Raising the Form 144 filing thresholds should also improve efficiency by reducing security holders' paperwork burden.

Under the amendments to Rule 145, individuals and smaller entities owning securities in companies that engage in transactions specified in Rule 145(a) will no longer be subject to the presumptive underwriter provision, except in the case of transactions involving a shell company. These amendments should improve the competitiveness of many smaller entities in permitting them to resell securities without the restrictions that were imposed by the rule before the amendments that we are adopting.

VI. Final Regulatory Flexibility Analysis

We have prepared this Final Regulatory Flexibility Analysis in

[233] See comment letter on the 2007 Proposing Release from Brill 1.

[234] See comment letters on the 2007 Proposing Release from Brill 1 and WS 2.

[235] See comment letter on the 2007 Proposing Release from Brill 1.

[236] Osborne, Alfred E., *Rule 144 Volume Limitations and the Sale of Restricted Securities in the Over-The-Counter Market,* Journal of Finance, 37, 505–523 (1982).

[237] See comment letters on the 2007 Proposing Release from NASAA.

[238] 15 U.S.C. 77b(b).

[239] See section IV.C of this section.

[240] See, *e.g.*, comment letters on the 2007 Proposing Release from Financial Associations; Pink Sheets; Richardson Patel; Roth; and Sichenzia.

[241] See comment letter on the 2007 Proposing Release from Williams.

[242] See, *e.g.*, comment letters on the 2007 Proposing Release from Fried Frank and SCSGP. Some commenters even supported eliminating the Form 144 filing requirement for both affiliates and non-affiliates. See comment letters from ABA; BAIS; SCSGP; and Sullivan.

accordance with Section 603 of the Regulatory Flexibility Act.[243] This analysis relates to the amendments to Rules 144 and 145 and Form 144 under the Securities Act. An Initial Regulatory Flexibility Analysis (IRFA) was prepared in accordance with the Regulatory Flexibility Act in conjunction with the 2007 Proposing Release. The 2007 Proposing Release included, and solicited comment on, the IRFA.

A. Reasons for, and Objectives of, the Amendments

On July 5, 2007, we proposed amendments to Rules 144 and 145 of the Securities Act.[244] Rule 144 provides a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. If a selling security holder satisfies the Rule 144 conditions, that selling security holder may resell his or her securities publicly without registration and without being deemed an underwriter.

Rule 145 governs the offer and sale of certain securities received in connection with reclassifications, mergers, consolidations and asset transfers. It imposes restrictions similar to Rule 144 on a party to such transactions and to persons who are affiliates of that party at the time the transaction is submitted for vote or consent, with regard to securities acquired in that transaction.

Under the amendments we are adopting, Form 144 is required to be filed by affiliates of the issuer intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three-month period exceeds 5,000 shares or other units or the aggregate sales price exceeds $50,000. The primary purpose of the form is to publicly disclose the proposed sale of securities by persons who, under Rule 144, are deemed not to be engaged in the distribution of the securities.

We are amending Rule 144 to make it easier to understand and apply. We are streamlining both the Preliminary Note to Rule 144 and the Rule 144 text. In addition to codifying several staff interpretive positions, the amendments will reduce the Rule 144 holding period requirement and substantially reduce other Rule 144 conditions for the resales of securities by non-affiliates.

The reduction of the Rule 144 holding period requirement for restricted securities of reporting companies for affiliates and non-affiliates should increase the liquidity of privately issued securities, enabling companies to raise private capital more efficiently. Although the codification of several staff interpretive positions is not intended to substantively change the rules, this should simplify analysis under Rule 144 by compiling these interpretations in one readily accessible location. The objectives of the amendments are to simplify Rule 144, to reduce its burdens on investors where consistent with investor protection, and to facilitate capital formation.

The amendments that increase the share and dollar thresholds that trigger a Form 144 filing take into account the effects of inflation since 1972. The amendments to the Form 144 filing requirements will eliminate much of the paperwork burden for selling security holders.

B. Significant Issues Raised by Comments

Some commenters stated that the proposals would facilitate capital raising for smaller companies without compromising investor protection.[245] One commenter noted that the elimination of the restrictions applicable to non-affiliates would save countless dollars and wasted resources.[246] On the other hand, one commenter that opposed the shortened holding periods stated that under the amendments, companies, especially small companies, will avoid registration on the federal and state level.[247] We acknowledge that, while this may be a potential cost of shortening the holding period, a six-month holding period is a reasonable indication that the security holder has assumed sufficient economic risk in the securities. Further, the potential cost caused by the amendments is justified by the potential benefits relating to capital formation that we believe will result from the amendments.

Some commenters had concerns about the codification of the staff interpretation that prohibits security holders of shell companies or former shell companies from relying on Rule 144 for the resale of their securities. Three commenters expressed concern that under the proposed amendments, security holders of non-reporting shell companies would not be able to rely on Rule 144.[248] Two commenters were concerned that this could reduce funding for and penalize smaller companies.[249] We believe that the amendments relating to the use of Rule 144 for the resale of securities of shell companies are necessary to protect against abuses relating to the distribution of securities of shell companies.

C. Small Entities Subject to the Rule

The rules will affect both small entities that issue securities and small entities that hold such securities. An issuer, other than an investment company, is considered a ''small business'' for purposes of the Regulatory Flexibility Act if that issuer:

- Has assets of $5 million or less on the last day of its most recent fiscal year, and
- Is engaged or proposing to engage in a small business financing.[250]

An issuer is considered to be engaged in a small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b)[251] of the Securities Act. This dollar amount is currently $5 million. When used with reference to an issuer or person, other than an investment company, Exchange Act Rule 0–10[252] defines small entity to mean an issuer or person that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

We are aware of approximately 1,100 Exchange Act reporting companies that currently satisfy the definition of ''small business'' and may be affected by the amendments as issuers of the securities sold under Rule 144.[253] The amendments also may affect companies that are small businesses, but that are not subject to Exchange Act reporting requirements. As noted above, we currently estimate that approximately 60,500 notices on Form 144 are filed annually.[254] We do not collect information in Form 144 about the size of an issuer, but we believe that some non-reporting issuers may be ''small.''

The amendments that relate to the Rule 144 manner of sale requirements may also affect brokers that qualify as

[243] 5 U.S.C. 603.

[244] See Release No. 33–8813.

[245] See, *e.g.*, comment letters on the 2007 Proposing Release from Pink Sheets; Roth; and Sichenzia.

[246] See comment letter on the 2007 Proposing Release from Brill 1.

[247] See comment letter on the 2007 Proposing Release from NASAA.

[248] See comment letters on the 2007 Proposing Release from Nelson; Russell; and Williams. The comment letter on the 2007 Proposing Release from Pink Sheets submitted various recommendations regarding how to improve the adequacy of information on non-reporting companies.

[249] See comment letters on the 2007 Proposing Release from Nelson and Russell.

[250] 17 CFR 230.157.

[251] 15 U.S.C. 77c(b).

[252] 17 CFR 240.0–10.

[253] The estimated number of reporting small entities is based on 2007 data including the SEC EDGAR database and Thomson Financial's Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings.

[254] This reflects current OMB estimates.

small entities. We estimate that 910 broker-dealers registered with the Commission are small entities for the purposes of the Regulatory Flexibility Act.[255]

In the 2007 Proposing Release, we solicited comment on the estimate of the number of small entities that may be affected by the proposed amendments. We did not receive any comments providing an estimate of the number of small entities that will be affected by the amendments.

D. Reporting, Recordkeeping and Other Compliance Requirements

We expect several of the amendments to reduce the number of Forms 144 filed with us by selling security holders. We are adopting amendments that will eliminate the need for non-affiliates relying on the Rule 144 safe harbor to comply with most of the conditions of Rule 144, after the holding period is met. We are also increasing the share number and dollar amount thresholds that trigger a Form 144 filing requirement.

As a result of the amendments, non-affiliates no longer will be required to file a Form 144, after the requisite holding period is met, in order to sell their securities under Rule 144, regardless of the amount of securities to be sold. As noted earlier, we estimate that 45% of Forms 144 that we currently receive relate to restricted securities held by non-affiliates. Therefore, this particular amendment should result in a corresponding reduction in the number of Forms 144 filed annually.

The increase in the filing thresholds for Form 144 should decrease the number of Forms 144 filed by affiliates. Based on studies conducted by our Office of Economic Analysis, we expect the number of Form 144 filings to decrease further by approximately 30%, as a result of the increase in the filing thresholds to 5,000 shares or $50,000 in sales price in a three-month period.

Clerical skills are necessary to complete Form 144.

Also, because the amendments significantly reduce the conditions in Rule 144 to which non-affiliates are subject in the resale of their securities, non-affiliates will no longer be required to keep track of compliance with those conditions to which non-affiliates will no longer be subject. Non-affiliates selling securities of either reporting issuers or non-reporting issuers under Rule 144 will no longer be required to comply with the manner of sale requirements and volume limitations. Non-affiliates selling securities of non-reporting issuers under Rule 144 will no longer be required to comply with the current public information requirement.

The amendments eliminating the manner of sale requirements for debt securities also will obviate the need for security holders to determine whether such condition has been met in the resale of their debt securities. As a result of both the amendments relating to the manner of sale requirements and the volume limitations with regard to debt securities, however, more security holders will be able to sell their securities under the Rule 144 safe harbor.

The amendments to Rule 145 will eliminate the need for parties to a Rule 145(a) transaction or their affiliates to determine whether they have complied with the Rule 145 resale provisions for presumed underwriters, except when the transaction involves a shell company.

E. Agency Action To Minimize Effect on Small Entities

We considered different compliance standards for the small entities that will be affected by the amendments. In the 1997 Proposing Release, we solicited comment regarding the possibility of different standards for small entities. However, we believe that such differences would be inconsistent with the purposes of the rules.

Because the amendments will benefit all companies and holders of restricted securities, differing compliance timetables or standards for small entities are not appropriate. In addition, the shortened holding period will likely have a favorable impact on small entities by increasing a company's ability to raise capital in private securities transactions, which may improve the competitiveness of those companies, particularly smaller businesses that do not have ready access to public markets. The amendments that clarify and streamline Rule 144 should benefit all companies, including small entities. The amendments relating to the manner of sale requirements and volume limitations for debt securities should benefit issuers of debt securities, preferred stock, and asset-backed securities. We continue to believe that further changes, such as the use of performance standards or other exemptions with regard to small entities, would overly complicate the rule, which is contrary to our stated purpose. The prohibition against security holders of reporting and non-reporting shell companies from relying on Rule 144 protects against abuses relating to the resale of privately issued securities.

The amendments to Rule 145 will eliminate the presumptive underwriter provision and resale restrictions on parties to a transaction specified in Rule 145(a) and their affiliates, including small entities and their affiliates, except when the transaction involves a shell company. We believe that retaining the presumptive underwriter provision when the transaction involves a shell company is necessary, given the potential for abuse relating to such transactions.

VII. Statutory Basis and Text of Amendments

We are adopting the amendments pursuant to Sections 2(a)(11), 4(1), 4(3), 4(4), 7, 10, 19(a) and 28 of the Securities Act, as amended.

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. Revise the authority citation for Part 230 to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Amend § 230.144 by:

■ a. Revising the preliminary note;

■ b. Revising paragraphs (a)(3)(vi) and (a)(3)(vii), and adding paragraphs (a)(3)(viii) and (a)(4);

■ c. Revising paragraphs (b), (c), (d)(1), (d)(3)(i), (d)(3)(ii), (d)(3)(vii) and (d)(3)(viii);

■ d. Adding paragraphs (d)(3)(ix) through paragraphs (d)(3)(x);

■ e. Revising the introductory text to paragraphs (e) and (e)(1);

■ f. Revising paragraphs (e)(2) and (e)(3);

■ g. Revising paragraph (f);

■ h. Revising paragraph (g)(1);

[255] For purposes of the Regulatory Flexibility Act, a broker or dealer is a small entity if it (i) had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year, and (ii) is not affiliated with any person that is not a small entity and is not affiliated with any person that is not a small entity. 17 CFR 240.0–1.

■ i. Redesignating existing paragraph (g)(2) as paragraph (g)(3) and revising newly redesignated paragraph (g)(3);
■ j. Redesignating existing paragraph (g)(3) and related notes as paragraph (g)(4) and related notes;
■ k. Adding new paragraph (g)(2);
■ l. Revising paragraphs (h) and (i); and
■ m. Removing paragraphs (j) and (k).

The revisions and additions read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

Preliminary Note: Certain basic principles are essential to an understanding of the registration requirements in the Securities Act of 1933 (the Act or the Securities Act) and the purposes underlying Rule 144:

1. If any person sells a non-exempt security to any other person, the sale must be registered unless an exemption can be found for the transaction.

2. Section 4(1) of the Securities Act provides one such exemption for a transaction ''by a person other than an issuer, underwriter, or dealer.'' Therefore, an understanding of the term ''underwriter'' is important in determining whether or not the Section 4(1) exemption from registration is available for the sale of the securities.

The term ''underwriter'' is broadly defined in Section 2(a)(11) of the Securities Act to mean any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. The interpretation of this definition traditionally has focused on the words ''with a view to'' in the phrase ''purchased from an issuer with a view to * * * distribution.'' An investment banking firm which arranges with an issuer for the public sale of its securities is clearly an ''underwriter'' under that section. However, individual investors who are not professionals in the securities business also may be ''underwriters'' if they act as links in a chain of transactions through which securities move from an issuer to the public.

Since it is difficult to ascertain the mental state of the purchaser at the time of an acquisition of securities, prior to and since the adoption of Rule 144, subsequent acts and circumstances have been considered to determine whether the purchaser took the securities ''with a view to distribution'' at the time of the acquisition. Emphasis has been placed on factors such as the length of time the person held the securities and whether there has been an unforeseeable change in circumstances of the holder. Experience has shown, however, that reliance upon such factors alone has led to uncertainty in the application of the registration provisions of the Act.

The Commission adopted Rule 144 to establish specific criteria for determining whether a person is not engaged in a distribution. Rule 144 creates a safe harbor from the Section 2(a)(11) definition of ''underwriter.'' A person satisfying the applicable conditions of the Rule 144 safe harbor is deemed not to be engaged in a distribution of the securities and therefore not an underwriter of the securities for purposes of Section 2(a)(11). Therefore, such a person is deemed not to be an underwriter when determining whether a sale is eligible for the Section 4(1) exemption for ''transactions by any person other than an issuer, underwriter, or dealer.'' If a sale of securities complies with all of the applicable conditions of Rule 144:

1. Any affiliate or other person who sells restricted securities will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction;

2. Any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction; and

3. The purchaser in such transaction will receive securities that are not restricted securities.

Rule 144 is not an exclusive safe harbor. A person who does not meet all of the applicable conditions of Rule 144 still may claim any other available exemption under the Act for the sale of the securities. The Rule 144 safe harbor is not available to any person with respect to any transaction or series of transactions that, although in technical compliance with Rule 144, is part of a plan or scheme to evade the registration requirements of the Act.

(a) * * *

(3) * * *

(vi) Securities acquired in a transaction made under § 230.801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, ''restricted securities'' within the meaning of this paragraph (a)(3);

(vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were ''restricted securities'' within the meaning of this paragraph (a)(3); and

(viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(6) (15 U.S.C. 77d(6)) of the Act.

(4) The term *debt securities* means:

(i) Any security other than an equity security as defined in § 230.405;

(ii) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(iii) Asset-backed securities, as defined in § 229.1101 of this chapter.

(b) *Conditions to be met.* Subject to paragraph (i) of this section, the following conditions must be met:

(1) *Non-Affiliates.* (i) If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of paragraphs (c)(1) and (d) of this section are met. The requirements of paragraph (c)(1) of this section shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of one year has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer.

(ii) If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer at the time of the sale, and has not been an affiliate during the preceding three months, who sells restricted securities of the issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if the condition of paragraph (d) of this section is met.

(2) *Affiliates or persons selling on behalf of affiliates.* Any affiliate of the issuer, or any person who was an affiliate at any time during the 90 days immediately before the sale, who sells restricted securities, or any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities, or any person who sells restricted or any other securities for the account of a person who was an affiliate at any time during the 90 days immediately before the sale, shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.

(c) *Current public information.* Adequate current public information with respect to the issuer of the

securities must be available. Such information will be deemed to be available only if the applicable condition set forth in this paragraph is met:

(1) *Reporting Issuers.* The issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has filed all required reports under section 13 or 15(d) of the Exchange Act, as applicable, during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter); or

(2) *Non-reporting Issuers.* If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, there is publicly available the information concerning the issuer specified in paragraphs (a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi) of § 240.15c2–11 of this chapter, or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of the Exchange Act (15 U.S.C. 78*l*(g)(2)(G)(i)).

Note to § 230.144(c). With respect to paragraph (c)(1), the person can rely upon:

1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has filed all reports required under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; or

2. A written statement from the issuer that it has complied with such reporting requirements.

3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

(d) * * *

(1) *General rule.* (i) If the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of six months must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(ii) If the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(iii) If the acquiror takes the securities by purchase, the holding period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

* * * * *

(3) * * *

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions and exchanges.* If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.

Note to § 230.144(d)(3)(ii). If the surrendered securities originally did not provide for cashless conversion or exchange by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the surrendered securities to permit cashless conversion or exchange, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the surrendered securities, so long as, in the conversion or exchange, the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer.

* * * * *

(vii) *Estates.* Where a deceased person was an affiliate of the issuer, securities held by the estate of such person or acquired from such estate by the estate beneficiaries shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

Note to § 230.144(d)(3)(vii). While there is no holding period or amount limitation for estates and estate beneficiaries which are not affiliates of the issuer, paragraphs (c) and (h) of this section apply to securities sold by such persons in reliance upon this section.

(viii) *Rule 145(a) Transactions.* The holding period for securities acquired in a transaction specified in § 230.145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction, except as otherwise provided in paragraphs (d)(3)(ii) and (ix) of this section.

(ix) *Holding company formations.* Securities acquired from the issuer in a transaction effected solely for the purpose of forming a holding company shall be deemed to have been acquired at the same time as the securities of the predecessor issuer exchanged in the holding company formation where:

(A) The newly formed holding company's securities were issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;

(B) Holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and

(C) Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor company and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor company had before the transaction.

(x) *Cashless exercise of options and warrants.* If the securities sold were acquired from the issuer solely upon cashless exercise of options or warrants issued by the issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the exercised options or warrants, even if the options or warrants exercised originally did not provide for cashless exercise by their terms.

Note 1 to § 230.144(d)(3)(x). If the options or warrants originally did not provide for cashless exercise by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the options or warrants to permit cashless exercise, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the options or warrants so long as the exercise itself was cashless.

Note 2 to § 230.144(d)(3)(x). If the options or warrants are not purchased for cash or property and do not create any investment

risk to the holder, as in the case of employee stock options, the newly acquired securities shall be deemed to have been acquired at the time the options or warrants are exercised, so long as the full purchase price or other consideration for the newly acquired securities has been paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer at the time of exercise.

(e) *Limitation on amount of securities sold.* Except as hereinafter provided, the amount of securities sold for the account of an affiliate of the issuer in reliance upon this section shall be determined as follows:

(1) If any securities are sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, the amount of securities sold, together with all sales of securities of the same class sold for the account of such person within the preceding three months, shall not exceed the greatest of:

* * * * *

(2) If the securities sold are debt securities, then the amount of debt securities sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, shall not exceed the greater of the limitation set forth in paragraph (e)(1) of this section or, together with all sales of securities of the same tranche (or class when the securities are non-participatory preferred stock) sold for the account of such person within the preceding three months, ten percent of the principal amount of the tranche (or class when the securities are non-participatory preferred stock) attributable to the securities sold.

(3) *Determination of amount.* For the purpose of determining the amount of securities specified in paragraph (e)(1) of this section and, as applicable, paragraph (e)(2) of this section, the following provisions shall apply:

(i) Where both convertible securities and securities of the class into which they are convertible are sold, the amount of convertible securities sold shall be deemed to be the amount of securities of the class into which they are convertible for the purpose of determining the aggregate amount of securities of both classes sold;

(ii) The amount of securities sold for the account of a pledgee of those securities, or for the account of a purchaser of the pledged securities, during any period of three months within six months (or within one year if the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act) after a default in the obligation secured by the pledge, and the amount of securities sold during the same three-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

Note to § 230.144(e)(3)(ii). Sales by a pledgee of securities pledged by a borrower will not be aggregated under paragraph (e)(3)(ii) with sales of the securities of the same issuer by other pledgees of such borrower in the absence of concerted action by such pledgees.

(iii) The amount of securities sold for the account of a donee of those securities during any three-month period within six months (or within one year if the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act) after the donation, and the amount of securities sold during the same three-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any three-month period within six months (or within one year if the issuer of the securities is not, or has not been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act) after the acquisition of the securities by the trust, and the amount of securities sold during the same three-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable;

(v) The amount of securities sold for the account of the estate of a deceased person, or for the account of a beneficiary of such estate, during any three-month period and the amount of securities sold during the same three-month period for the account of the deceased person prior to his death shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) or (2) of this section, whichever is applicable: *Provided,* that no limitation on amount shall apply if the estate or beneficiary of the estate is not an affiliate of the issuer;

(vi) When two or more affiliates or other persons agree to act in concert for the purpose of selling securities of an issuer, all securities of the same class sold for the account of all such persons during any three-month period shall be aggregated for the purpose of determining the limitation on the amount of securities sold;

(vii) The following sales of securities need not be included in determining the amount of securities to be sold in reliance upon this section:

(A) Securities sold pursuant to an effective registration statement under the Act;

(B) Securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act;

(C) Securities sold in a transaction exempt pursuant to section 4 of the Act (15 U.S.C. 77d) and not involving any public offering; and

(D) Securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

(f) *Manner of sale.* (1) The securities shall be sold in one of the following manners:

(i) *Brokers' transactions* within the meaning of section 4(4) of the Act;

(ii) Transactions directly with a *market maker*, as that term is defined in section 3(a)(38) of the Exchange Act; or

(iii) *Riskless principal transactions* where:

(A) The offsetting trades must be executed at the same price (exclusive of an explicitly disclosed markup or markdown, commission equivalent, or other fee);

(B) The transaction is permitted to be reported as riskless under the rules of a self-regulatory organization; and

(C) The requirements of paragraphs (g)(2)(applicable to any markup or markdown, commission equivalent, or other fee), (g)(3), and (g)(4) of this section are met.

Note to § 230.144(f)(1): For purposes of this paragraph, a *riskless principal transaction* means a principal transaction where, after having received from a customer an order to buy, a broker or dealer purchases the security as principal in the market to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to the market to satisfy the order to sell.

(2) The person selling the securities shall not:

(i) Solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or

(ii) Make any payment in connection with the offer or sale of the securities to any person other than the broker or dealer who executes the order to sell the securities.

(3) Paragraph (f) of this section shall not apply to:

(i) Securities sold for the account of the estate of a deceased person or for the

account of a beneficiary of such estate provided the estate or estate beneficiary is not an affiliate of the issuer; or

(ii) Debt securities.

(g) * * *

(1) Does no more than execute the order or orders to sell the securities as agent for the person for whose account the securities are sold;

(2) Receives no more than the usual and customary broker's commission;

(3) Neither solicits nor arranges for the solicitation of customers' orders to buy the securities in anticipation of or in connection with the transaction; *Provided,* that the foregoing shall not preclude:

(i) Inquiries by the broker of other brokers or dealers who have indicated an interest in the securities within the preceding 60 days;

(ii) Inquiries by the broker of his customers who have indicated an unsolicited bona fide interest in the securities within the preceding 10 business days;

(iii) The publication by the broker of bid and ask quotations for the security in an inter-dealer quotation system provided that such quotations are incident to the maintenance of a bona fide inter-dealer market for the security for the broker's own account and that the broker has published bona fide bid and ask quotations for the security in an inter-dealer quotation system on each of at least twelve days within the preceding thirty calendar days with no more than four business days in succession without such two-way quotations; or

(iv) The publication by the broker of bid and ask quotations for the security in an alternative trading system, as defined in § 242.300 of this chapter, provided that the broker has published bona fide bid and ask quotations for the security in the alternative trading system on each of the last twelve business days; and

Note to § 230.144(g)(3)(ii). The broker should obtain and retain in his files written evidence of indications of bona fide unsolicited interest by his customers in the securities at the time such indications are received.

* * * * *

(h) *Notice of proposed sale.* (1) If the amount of securities to be sold in reliance upon this rule during any period of three months exceeds 5,000 shares or other units or has an aggregate sale price in excess of $50,000, three copies of a notice on Form 144 (§ 239.144 of this chapter) shall be filed with the Commission. If such securities are admitted to trading on any national securities exchange, one copy of such notice also shall be transmitted to the principal exchange on which such securities are admitted.

(2) The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment on such notice shall be deemed to preclude the Commission from taking any action that it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The person filing the notice required by this paragraph shall have a bona fide intention to sell the securities referred to in the notice within a reasonable time after the filing of such notice.

(i) *Unavailability to securities of issuers with no or nominal operations and no or nominal non-cash assets.* (1) This section is not available for the resale of securities initially issued by an issuer defined below:

(i) An issuer, other than a business combination related shell company, as defined in § 230.405, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(A) No or nominal operations; and

(B) Either:

(*1*) No or nominal assets;

(*2*) Assets consisting solely of cash and cash equivalents; or

(*3*) Assets consisting of any amount of cash and cash equivalents and nominal other assets; or

(ii) An issuer that has been at any time previously an issuer described in paragraph (i)(1)(i).

(2) Notwithstanding paragraph (i)(1), if the issuer of the securities previously had been an issuer described in paragraph (i)(1)(i) but has ceased to be an issuer described in paragraph (i)(1)(i); is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act; has filed all reports and other materials required to be filed by section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and materials), other than Form 8-K reports (§ 249.308 of this chapter); and has filed current ''Form 10 information'' with the Commission reflecting its status as an entity that is no longer an issuer described in paragraph (i)(1)(i), then those securities may be sold subject to the requirements of this section after one year has elapsed from the date that the issuer filed ''Form 10 information'' with the Commission.

(3) The term ''Form 10 information'' means the information that is required by Form 10 or Form 20-F (§ 249.210 or § 249.220f of this chapter), as applicable to the issuer of the securities, to register under the Exchange Act each class of securities being sold under this rule. The issuer may provide the Form 10 information in any filing of the issuer with the Commission. The Form 10 information is deemed filed when the initial filing is made with the Commission.

■ 3. Amend § 230.145 by revising paragraphs (c), (d) and (e) and removing the authority citation following § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(c) *Persons and parties deemed to be underwriters.* For purposes of this section, if any party to a transaction specified in paragraph (a) of this section is a shell company, other than a business combination related shell company, as those terms are defined in § 230.405, any party to that transaction, other than the issuer, or any person who is an affiliate of such party at the time such transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with any such transaction, shall be deemed to be engaged in a distribution and therefore to be an underwriter thereof within the meaning of Section 2(a)(11) of the Act.

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c), a person or party specified in that paragraph shall not be deemed to be engaged in a distribution and therefore not to be an underwriter of securities acquired in a transaction specified in paragraph (a) that was registered under the Act if:

(1) The issuer has met the requirements applicable to an issuer of securities in paragraph (i)(2) of § 230.144; and

(2) One of the following three conditions is met:

(i) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f), and (g) of § 230.144 and at least 90 days have elapsed since the date the securities were acquired from the issuer in such transaction; or

(ii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and at least six months, as determined in accordance

with paragraph (d) of § 230.144, have elapsed since the date the securities were acquired from the issuer in such transaction, and the issuer meets the requirements of paragraph (c) of § 230.144; or

(iii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and at least one year, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction.

Note to § 230.145(c) and (d): Paragraph (d) is not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(e) *Definitions.* (1) The term *affiliate* as used in paragraphs (c) and (d) of this section shall have the same meaning as the definition of that term in § 230.144.

(2) The term *party* as used in paragraphs (c) and (d) of this section shall mean the corporations, business entities, or other persons, other than the issuer, whose assets or capital structure are affected by the transactions specified in paragraph (a) of this section.

(3) The term *person* as used in paragraphs (c) and (d) of this section, when used in reference to a person for whose account securities are to be sold, shall have the same meaning as the definition of that term in paragraph (a)(2) of § 230.144.

■ 4. Amend § 230.190 by:

■ a. Revising paragraphs (a)(2) and (a)(3); and

■ b. Adding paragraph (a)(4).

The revisions and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

(a) * * *

(1) * * *

(2) Neither the issuer of the underlying securities nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction;

(3) If the underlying securities are restricted securities, as defined in § 230.144(a)(3), § 230.144 must be available for the sale of the securities, provided however, that notwithstanding any other provision of § 230.144, § 230.144 shall only be so available if at least two years have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or from an affiliate of the issuer of the underlying securities; and

(4) The depositor would be free to publicly resell the underlying securities without registration under the Act. For example, the offering of the asset-backed security does not constitute part of a distribution of the underlying securities. An offering of asset-backed securities with an asset pool containing underlying securities that at the time of the purchase for the asset pool are part of a subscription or unsold allotment would be a distribution of the underlying securities. For purposes of this section, in an offering of asset-backed securities involving a sponsor, depositor or underwriter that was an underwriter or an affiliate of an underwriter in a registered offering of the underlying securities, the distribution of the asset-backed securities will not constitute part of a distribution of the underlying securities if the underlying securities were purchased at arm's length in the secondary market at least three months after the last sale of any unsold allotment or subscription by the affiliated underwriter that participated in the registered offering of the underlying securities.

* * * * *

§ 230.701 [Amended]

■ 5. Amend 230.701, paragraph (g)(3), by revising the phrase ''without compliance with paragraphs (c), (d), (e), and (h) of § 230.144'' to read ''without compliance with paragraphs (c) and (d) of § 230.144''.

■ 6. Amend § 230.903 by revising paragraph (b)(3)(iii)(A), the introductory text of paragraph (b)(3)(iii)(B) and paragraph (b)(3)(iv) to read as follows:

§ 230.903 Offers or sales of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; conditions relating to specific securities.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) The offer or sale, if made prior to the expiration of a one-year distribution compliance period (or six-month distribution compliance period if the issuer is a reporting issuer), is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(B) The offer or sale, if made prior to the expiration of a one-year distribution compliance period (or six-month distribution compliance period if the issuer is a reporting issuer), is made pursuant to the following conditions:

* * * * *

(iv) Each distributor selling securities to a distributor, a dealer (as defined in section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a selling concession, fee or other remuneration, prior to the expiration of a 40-day distribution compliance period in the case of debt securities, or a one-year distribution compliance period (or six-month distribution compliance period if the issuer is a reporting issuer) in the case of equity securities, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 8. Amend § 239.144 by revising paragraph (b) to read as follows:

§ 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.

* * * * *

(b) This form need not be filed if the amount of securities to be sold during any period of three months does not exceed 5,000 shares or other units and the aggregate sale price does not exceed $50,000.

* * * * *

■ 9. Form 144 (referenced in § 239.144) is revised as set forth in the Appendix.

By the Commission.

Dated: December 6, 2007.

Nancy M. Morris,

Secretary.

Note: The following Appendix to the Preamble will not appear in the Code of Federal Regulations.

Appendix

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0101
Expires:	December 31, 2009
Estimated average burden hours per response	2.00

SEC USE ONLY
DOCUMENT SEQUENCE NO.
CUSIP NUMBER
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FORM 144

NOTICE OF PROPOSED SALE OF SECURITIES PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OF 1933

ATTENTION: *Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute sale or executing a sale directly with a market maker.*

1 *(a)* NAME OF ISSUER *(Please type or print)*	*(b)* IRS IDENT. NO.	*(c)* S.E.C. FILE NO.

1 *(d)* ADDRESS OF ISSUER	STREET	CITY	STATE	ZIP CODE	*(e)* TELEPHONE NO. AREA CODE	NUMBER

2 *(a)* NAME OF PERSON FOR WHOSE ACCOUNT THE SECURITIES ARE TO BE SOLD		*(b)* RELATIONSHIP TO ISSUER	*(c)* ADDRESS STREET	CITY	STATE	ZIP CODE

INSTRUCTION: The person filing this notice should contact the issuer to obtain the I.R.S. Identification Number and the S.E.C. File Number.

3 *(a)* Title of the Class of Securities To Be Sold	*(b)* Name and Address of Each Broker Through Whom the Securities are to be Offered or Each Market Maker who is Acquiring the Securities	SEC USE ONLY Broker-Dealer File Number	*(c)* Number of Shares or Other Units To Be Sold *(See instr. 3(c))*	*(d)* Aggregate Market Value *(See instr. 3(d))*	*(e)* Number of Shares or Other Units Outstanding *(See instr. 3(e))*	*(f)* Approximate Date of Sale *(See instr. 3(f))* (MO. DAY YR.)	*(g)* Name of Each Securities Exchange *(See instr. 3(g))*

INSTRUCTIONS:

1. (a) Name of issuer
   (b) Issuer's I.R.S. Identification Number
   (c) Issuer's S.E.C. file number, if any
   (d) Issuer's address, including zip code
   (e) Issuer's telephone number, including area code

2. (a) Name of person for whose account the securities are to be sold
   (b) Such person's relationship to the issuer (e.g., officer, director, 10% stockholder, or member of immediate family of any of the foregoing)
   (c) Such person's address, including zip code

3. (a) Title of the class of securities to be sold
   (b) Name and address of each broker through whom the securities are intended to be sold
   (c) Number of shares or other units to be sold (if debt securities, give the aggregate face amount)
   (d) Aggregate market value of the securities to be sold as of a specified date within 10 days prior to the filing of this notice
   (e) Number of shares or other units of the class outstanding, or if debt securities the face amount thereof outstanding, as shown by the most recent report or statement published by the issuer
   (f) Approximate date on which the securities are to be sold
   (g) Name of each securities exchange, if any, on which the securities are intended to be sold

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1147 (08-07)

TABLE I — SECURITIES TO BE SOLD

Furnish the following information with respect to the acquisition of the securities to be sold and with respect to the payment of all or any part of the purchase price or other consideration therefor:

Title of the Class	Date you Acquired	Nature of Acquisition Transaction	Name of Person from Whom Acquired *(If gift, also give date donor acquired)*	Amount of Securities Acquired	Date of Payment	Nature of Payment

INSTRUCTIONS: If the securities were purchased and full payment therefor was not made in cash at the time of purchase, explain in the table or in a note thereto the nature of the consideration given. If the consideration consisted of any note or other obligation, or if payment was made in installments describe the arrangement and state when the note or other obligation was discharged in full or the last installment paid.

TABLE II — SECURITIES SOLD DURING THE PAST 3 MONTHS

Furnish the following information as to all securities of the issuer sold during the past 3 months by the person for whose account the securities are to be sold.

Name and Address of Seller	Title of Securities Sold	Date of Sale	Amount of Securities Sold	Gross Proceeds

REMARKS:

INSTRUCTIONS:
See the definition of "person" in paragraph (a) of Rule 144. Information is to be given not only as to the person for whose account the securities are to be sold but also as to all other persons included in that definition. In addition, information shall be given as to sales by all persons whose sales are required by paragraph (e) of Rule 144 to be aggregated with sales for the account of the person filing this notice.

ATTENTION:
The person for whose account the securities to which this notice relates are to be sold hereby represents by signing this notice that he does not know any material adverse information in regard to the current and prospective operations of the Issuer of the securities to be sold which has not been publicly disclosed. If such person has adopted a written trading plan or given trading instructions to satisfy Rule 10b5-1 under the Exchange Act, by signing the form and indicating the date that the plan was adopted or the instruction given, that person makes such representation as of the plan adoption or instruction date.

DATE OF NOTICE

DATE OF PLAN ADOPTION OR GIVING OF INSTRUCTION, IF RELYING ON RULE 10B5-1

(SIGNATURE)

The notice shall be signed by the person for whose account the securities are to be sold. At least one copy of the notice shall be manually signed. Any copies not manually signed shall bear typed or printed signatures.

ATTENTION: Intentional misstatements or omission of facts constitute Federal Criminal Violations (See 18 U.S.C. 1001)

SEC 1147 (04-07)

[FR Doc. 07–6013 Filed 12–14–07; 8:45 am]
BILLING CODE 8011–01–C

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Monday, December 17, 2007

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 4343/P.L. 110–135
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To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through May 23, 2008, and for other purposes. (Dec. 14, 2007; 121 Stat. 1453)

H.J. Res. 69/P.L. 110–137
Making further continuing appropriations for the fiscal year 2008, and for other purposes. (Dec. 14, 2007; 121 Stat. 1454)

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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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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	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[9] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
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)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
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	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	[8] July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[9] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[9] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
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	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
*1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
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	(869–062–00181–9)	60.00	Oct. 1, 2007
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	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
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	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
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)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
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	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
*300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
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
Individual copies		4.00	2007
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.